RECORD AND BRIEFS

Supreme Court, U.S.
FILED
AUG 31 2017
OFFICE OF THE CLERK

No. 16-111

IN THE

Supreme Court of the United States

MASTERPIECE CAKESHOP, LTD.; AND JACK C. PHILLIPS,

Petitioners,

v.

COLORADO CIVIL RIGHTS COMMISSION; CHARLIE CRAIG; AND DAVID MULLINS,

Respondents.

On Writ of Certiorari to the Colorado Court of Appeals

JOINT APPENDIX

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Petition for Writ of Certiorari filed July 22, 2016
Petition for Writ of Certiorari granted June 26, 2017

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JOINT APPENDIX TABLE OF CONTENTS

Amended Certificate of Record of Administrative Proceedings provided by Colorado Civil Rights Commission[1], dated January 5, 2015 1

Supplemental Certificate of Record of Administrative Proceedings provided by Colorado Civil Rights Commission, dated February 26, 2015 21

Relevant Colorado Court of Appeals Docket Entries, Case Number 2014CA001351 23

Relevant Supreme Court of Colorado Docket Entries, Case Number 2015SC000738 28

Public Accommodations Intake Questionnaire by David Mullins and Charlie Craig, filed on August 23, 2012 (RAP[2] 0242-0250) 31

---

[1] The Colorado Civil Rights Commission and the Office of Administrative Courts do not keep a formal docket and provided the certificates of record as an alternative list of all items filed.

[2] "RAP" stands for the Record of Administrative Proceedings transmitted by the Commission Coordinator for the Colorado Civil Rights Division of the State of Colorado to the Colorado Court of Appeals on December 10, 2014. At times, during administrative and appellate level briefing, references to the RAP were cited as "Supp. PR. CF" followed by the pertinent page and, if applicable, paragraph number. Page numbers were the Bates numbers found in the lower right corner.

Charge of Discrimination by David Mullins, filed September 5, 2012 (RAP 0001) 47

Charge of Discrimination by Charlie Craig, filed September 5, 2012 (RAP 0002) 50

Request for Information by David Mullins, dated September 21, 2012 (RAP 0003) 53

Request for Information by Charlie Craig, dated September 21, 2012 (RAP 0004) 56

Masterpiece Cakeshops's Responses to Request for Information by Charlie Craig, filed October 22, 2012 (RAP 0005-0008) 59

Masterpiece Cakeshops's Responses to Request for Information by David Mullins, filed October 22, 2012 (RAP 0009-0012) 64

Determination in *Charlie Craig v. Masterpiece Cakeshop*, Charge Number: P20130008X, dated March 5, 2013 (RAP 0013-0016) 69

Determination in *David Mullins v. Masterpiece Cakeshop*, Charge Number: P20130007X, dated March 5, 2013 (RAP 0018-0021) 78

Notice of Hearing and Formal Complaint in *Charlie Craig v. Masterpiece Cakeshop*, Charge Number: P20130008X, filed May 31, 2013 (RAP 0023-0026) 87

Notice of Hearing and Formal Complaint in *David Mullins v. Masterpiece Cakeshop*, Charge Number: P20130007X, filed May 31, 2013 (RAP 0028-0032) 94

Order of Consolidation, filed June 27, 2013 (RAP 0052-0053) 101

Order Granting Motion to Intervene, filed July 9, 2013 (RAP 0144) 102

Respondent's Amended Responses to Counsel in Support of the Complaint's First Set of Requests for Admission to Respondents, served September 5, 2013 (RAP 0304-0308) 104

Excerpts from Memorandum of Law in Support of Complainants' Motion for Summary Judgment and exhibits attached thereto, filed September 20, 2013 110

Complainants' Statement of Undisputed Facts (RAP 0227-0229) 110

Excerpts from Exhibit D 113

Affidavit of Stephanie Schmalz (RAP 0267-0268) 113

Affidavit of Samantha Saggio (RAP 0269-0270) 117

Statement of Katie Allen (RAP 0271-0272)..... 119

Statement of Alison Sandlin (RAP 0273-0274)..... 121

Order Continuing Hearing and Order Regarding Pending Motions, filed October 2, 2013 (RAP 0378-0383) 123

Order Granting Complainants' Motion for Protective Order, filed October 9, 2013 (RAP 0401-0406) 135

Excerpts from Brief in Opposition to Complainants' Motion for Summary Judgment and in Support of Jack Phillips's Cross Motion for Summary Judgment and exhibits attached thereto, filed October 31, 2013 148

Undisputed Facts (RAP 0423-0427)..... 148

Exhibit 1 Affidavit of Jack Phillips (RAP 0468-0478) 155

Exhibit 2 Photo (RAP 0479) 170

Exhibit 3 Photo (RAP 0480) 171

Exhibit 5 Photo (RAP 0482) 172

Exhibit 6 Photo (RAP 0483) 173

Exhibit 10 Photo (RAP 0487) 174

Exhibit 17 Photo (RAP 0494) 175

Exhibit 18 Photo (RAP 0495) 176

Exhibit 25 Affidavit of Susie Swain (RAP 0504-0505) 177

Exhibit 29 Complainant's Responses to Respondents' Pattern and Non-Pattern Interrogatories to Complainant Charlie Craig (RAP 0514-0517) 180

Exhibit 30 Complainant's Responses to Respondents' Pattern and Non-Pattern Interrogatories to Complainant David Mullins (RAP 0519-0522) 187

Excerpts from Complainant's Response in Opposition to Respondents' Cross-Motion for Summary Judgment and Reply Brief in Support of Complainant's Motion for Summary Judgment, filed November 12, 2013 194

Complainant's Response to Respondents' Statement of Undisputed Facts ("RESP'S SOUF") (RAP 0530-0531) 194

Excerpts from Transcript of Colorado Civil Rights Commission Meeting Held on May 30, 2014 (RAP 0890-0901 and 0906-0907) 196

Notice of Appeal, filed July 16, 2014 (RAP 0636-0643) 208

Order on Respondents' Motion for Stay of Final Agency Order, filed July 25, 2014 (RAP 934-935) 217

Excerpts from Appellees Amended Answer Brief, filed March 10, 2015 in the Colorado Court of Appeals 220

Appellants' Notice of Supplemental Authority with exhibits, filed on April 13, 2015 225

Colorado Supreme Court Order Denying Petition for Writ of Certiorari, entered on April 25, 2016 259

Select Provisions of State of Colorado Civil Rights Commission Rules and Regulations, codified in 3 C.C.R. 708-1, effective November 30, 2009 261

Select Provisions of State of Colorado Civil Rights Commission Rules and Regulations, codified in 3 C.C.R. 708-1, effective December 15, 2014 305

STATE OF COLORADO **COLORADO CIVIL RIGHTS COMMISSION** 1560 Broadway, Suite 1050 Denver, Colorado 80202 **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents/Appellants, vs. **CHARLIE CRAIG and DAVID MULLINS,** Complainants/Appellees.	▲**COURT USE ONLY**▲ **Case No:** CR 2013-0008 **Court of Appeals Case No.:**

AMENDED CERTIFICATE OF RECORD OF ADMINISTRATIVE PROCEEDINGS

I, Shayla Malone, Commission Coordinator for the Colorado Civil Rights Division of the State of Colorado, hereby certify that the following items attached hereto and enumerated below constitute full and complete record of the administrative proceedings, as amended, in the above captioned case.

Volume Number	Number	Item Description	Page Number (Bottom Right)	Date
I	1	Charge of Discrimination signed by David Mullins	0001	09/04/2012
	2	Charge of Discrimination signed by Charlie Craig	0002	09/04/2012
	3	Request for Information, CR 2013-0009 (Mullins)	0003	09/21/2012
	4	Request for Information, CR 2013-0008 (Craig)	0004	09/21/2012
	5	Masterpiece Cakeshop's Responses to Request for Information, CR 2013-0008 (Craig)	0005-0008	10/22/2012
	6	Masterpiece Cakeshop's Responses to Request for	0009-0012	10/22/2012

		Information, CR 2013-0009 (Mullins)		
	7	Probable Cause Determination dated March 5, 2013 (Craig)	0013-0017	03/07/2013
	8	Probable Cause Determination dated March 5, 2013 (Mullins)	0018-0022	03/07/2013
	9	Notice of Hearing and Formal Complaint, CR 2013-0008 (Craig)	0023-0027	05/31/2013
	10	Notice of Hearing and Formal Complaint, CR 2013-0008 (Mullins)	0028-0033	05/31/2013
	11	Procedural Order dated June 5, 2013, CR 2013-0008 and CR 2013-0009)	0035	06/05/2013

	12	Entry of Appearance for Respondent, CR 2013-008	0036, 0034	06/20/2013
	13	Unopposed Motion to Commence and Continue Hearing, dated June 24, 2013, CR 2013-0009	0037-0039	06/24/2013
	14	Unopposed Motion to Consolidate, dated June 25, 2013, CR 2013-0008	0042-0047	06/25/2013
	15	Motion for Leave to Intervene, CR 2013-0008 and CR 2013-0009	0048-0051	06/27/2013
	16	Order of Consolidation	0052-0053	06/27/2013
	17	Order regarding Unopposed Motion to Commence and Continue Hearing	0054-0055	06/27/2013

	18	Out of State Counsel's Verified Motion Requesting *Pro Hac Vice* Admission of Amanda Goad, and Affidavit	0056-0063	06/27/2013
	19	Motion to Dismiss Jack Phillips Pursuant to C.R.C.P. 12(b)(l), (2) and (5)	0064-0068	07/01/2013
	20	Respondents' Motion to Dismiss Pursuant to C.R.C.P. 12(b)(5)	0069-0073	07/01/2013
	21	Motion for Extension of Time to Respond to Motion to Dismiss	0117-0119	07/15/2013
	22	Joint Discovery Plan, CR 2013-0008	0120-0123	07/01/2013

	23	Respondents' Brief in Support of Motion to Dismiss Pursuant to C.R.C.P. 12(b)(1), (2) and (5), and all exhibits attached thereto	0124-0143	07/16/2013
	24	Order Granting Motion to Intervene	0144-0145	07/09/2013
	25	Order	0146-0147	07/09/2013
	26	Order Granting Request to Appear Pro Hac Vice	0148-0149	07/09/2013
	27	Notice of Non-Receipt of Pleadings and Request for Service	0150-0151	07/17/2013
	28	Entry of Appearance of Sara J. Rich	0152, 0156, 0157	07/17/2013

	29	Entry of Appearance of Mark Silverstein	0154, 0155, 0153	07/17/2013
	30	Order Granting Extension of Time	0158-0159	07/29/2013
	31	Response to Respondents' Motion to Dismiss Pursuant to C.R.C.P. 12(b)(5), and all exhibits attached thereto	0160-0165	07/31/2013
	32	Response to Motion to Dismiss Jack C. Phillips, and all exhibits attached thereto	0074-0116	07/31/2013
	33	Joint Discovery Plan, CR 2013-0009	0166-0169	07/01/2013
	34	Respondents' Motion for	0170-0174	08/07/2013

		Leave to File Reply Briefs in Support of Motions to Dismiss Pursuant to C.R.C.P 12(b)(l), (2), and (5)		
	35	Order Granting Leave to File Reply	0175-0176	08/12/2013
	36	Respondents' Reply in Support of Motion to Dismiss Pursuant to C.R.C.P. 12(b)(l), (2) and (5)	0177-0183	08/26/2013
	37	Respondents' Reply in Support of Motion to Dismiss Jack C. Phillips Pursuant to C.R.C.P 12(b)(l), (2), and (5), and all exhibits	0184-0194	08/26/2013

		attached thereto		
	38	Respondent's Motion to Amend the Joint Discovery Plan, or in the Alternative, Motion to Compel Discovery, and all exhibits attached thereto	0195-0220	09/06/2013
	39	Counsel in Support of the Complainants' Response to Respondent's Motion to Amend the Joint Discovery Plan, or in the Alternative, Motion to Compel Discovery	0221-0223	09/13/2013
	40	Complainants' Response to Respondent's [sic] Motion to	0328-0367	09/19/2013

		Amend the Joint Discovery Plan and Motion to Compel Discovery and Request for Protective Order, and all exhibits attached thereto		
	41	Complainants' Motion for Summary Judgment	0368-0371	09/20/2013
	42	Memorandum of Law in Support of Complainants' Motion for Summary Judgment, and all exhibits attached thereto	0224-0327	09/20/2013
	43	Entry of Appearance for Respondent of Natalie L. Decker	0372-0374	09/20/2013

	44	Counsel in Support of the Complaint's Motion for Summary Judgment	0375-0377	09/26/2013
	45	Order Continuing Hearing and Order Regarding Pending Motions	0378-0384	10/02/2013
	46	Response to Complainants' Motion for Protective Order, and all exhibits attached thereto	0385-400	10/04/2013
	47	Order Granting Complainants' Motion for Protective Order	0401-0407	10/09/2013
	48	Respondents' Response in Opposition to Complainants' Motion for	0408-0412	10/31/2013

		Summary Judgment and Cross Motion for Summary Judgment		
	49	Brief in Opposition to Complainants' Motion for Summary Judgment, and all exhibits attached thereto	0413-0524	10/31/2013
	50	Complainants' Response in Opposition to Respondents' Cross-Motion for Summary Judgment and Reply Brief in Support of Complainants' Motion for Summary Judgment	0525-0565	11/12/2013
	51	Counsel in Support of the Complaint's Response in Opposition to	654-0656	11/13/2013

		Respondents' Cross-Motion for Summary Judgment		
	52	Complainants' Motion for Leave for All Parties to Reply to Motions for Summary Judgment and Request to Vacate the Hearing Date and Pretrial Statement Due Date	0657-0660	11/08/2014
	53	Order Granting Request to File Reply and Order Vacating Hearing	0661-0662	11/14/2013
	54	Counsel in Support of the Complaint's and Complainants' Joint Prehearing Statement	0663-0669	11/14/2013

	55	Counsel in Support of the Complaints' Request to Allow Joining in Complainants' Response in Opposition to Respondents' Cross-Motion for Summary Judgment and Reply Brief	0670-0672	11/14/2013
	56	Respondent's Motion to Strike Counsel in Support of the Complaint's Response in Opposition to Respondents' Cross-Motion for Summary Judgment	0674-0677	11/15/2013
	57	Reply in Support of Respondents' Cross Motion for Summary Judgment	0678-0706	11/25/2013

	58	Counsel in Support of the Complainant's Response to Respondents' Motion to Strike	0707-0709	11/25/2013
	59	Initial Decision Granting Complainants' Motion for Summary Judgment and Denying Respondents' Motion for Summary Judgment	0710-0722	12/06/2013
	60	Entry of Appearance of Counsel and Motion for Pro Hac Vice Admission of Out-of-State Counsel for Respondents	0723-0726	12/24/2013
	61	Respondents' Designation of Record	0727-0733	12/24/2013

	62	Notice of Appeal and Petition for Review by CCRC	0941-0944	1/03/2014
	63	Order Denying Motion for Pro Hac Vice Admission of Out-of-State Counsel for Respondents	0744	1/28/2014
	64	Notice of Briefing Schedule and Commission Review	0745-0746	3/7/2014
	65	Incomplete Record	0747	3/12/2014
	66	Notice of Amended Briefing Schedule and Commission Review	0748-0749	3/28/2014
	67	Respondents' Brief in Support of Appeal	0566-0577	4/18/2014
	68	Notice for Motion for	0578-0580	5/1/2014

		Leave to File Brief of Amici Curiae		
	69	Affirmation in Support of Motion for Leave to File Brief of Amici Cuirae	0581-0583	5/1/2014
	70	Brief of Amici Curiae Law Professors in Support of Complainants/ Appellees	0584-0597	5/1/2014
	71	Counsel in Support of the Complaint's Answer Brief	0598-0605	5/2/2014
	72	Complainants' Opposition to Respondents' Appeal	0606-0618	5/2/2014
	73	Respondents/ Appellants' Motion to Strike Motion and Amici Brief or, in the Alternative, for Order Denying	0619-0622	5/6/2014

		Motion to File Amici Brief		
	74	Order Regarding Motion for Oral Argument	0623	5/16/2014
	75	Order Granting Respondents/ Appellants' Motion to Strike	0624	5/6/2014
	76	Order Denying Respondents' Motion for Leave to File Reply Brief in Support of Appeal	0625	5/29/2014
	77	Order Granting Verified Motion for Pro Hac Vice Admission of Out-Of-State Counsel Jeremy D. Tedesco	0626	5/29/2014
	78	Final Agency Order	0627-0628	6/2/2014

	79	Respondents' Motion for Stay of Final Agency Order	0629-0635	7/15/204
	80	Notice of Appeal	0636-0644	7/16/2014
	81	Complainants' Response in Opposition to Respondents' Motion for Stay of Final Agency Order	0645-0651	7/24/2014
	82	Response in Opposition to Respondents' Motion for Stay of Final Agency Order	0652-0653	7/24/2014
	83	Order on Respondents' Motion for Stay of Final Agency Order	0934-0935	7/25/2014
II	84	Transcript from hearing held on September 26, 2013	0750-0778	9/26/2013
	85	Transcript from hearing	0813-0847	12/4/2013

		held on December 4, 2013		
	86	Transcript from Colorado Civil Rights Commission Meeting held on May 30, 2014	0877-0920	5/30/2014
	87	Transcript from Colorado Civil Rights Commission Meeting held on July 25, 2014	0920-0933	7/25/2014
	88	Amendments to Transcript of July 25, 2014 Meeting	0936-0940	12/1/2014

Dated this *5th* day of January, 2015.

s/ Shayla Malone
Shayla Malone, Commission Coordinator
Colorado Civil Rights Division
1560 Broadway, Suite 1050
Denver, Colorado 50202

* * * *

STATE OF COLORADO **COLORADO CIVIL RIGHTS COMMISSION** 1560 Broadway, Suite 1050 Denver, Colorado 80202 **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents/Appellants, vs. **CHARLIE CRAIG and DAVID MULLINS,** Complainants/Appellees.	▲**COURT USE ONLY**▲ **Civil Rights Commission Case No:** CR2013-0008 **Court of Appeals Case No.:** 2014CA1351

SUPPLEMENTAL CERTIFICATE OF RECORD OF ADMINISTRATIVE PROCEEDINGS

I, Shayla Malone, Commission Coordinator for the Colorado Civil Rights Division of the State of Colorado, hereby certify that the following supplements the record of the administrative proceedings, as amended, in the above captioned case. The entire, three page Final Agency Order referenced below and attached hereto is therefore, in sequential order, Bates numbered 0627, 0945, and 0628.

Volume Number	Number	Item Description	Page Number (Bottom Right)	Date
I	78	Page 2 of Final Agency Order signed 5/30/14	0945	06/02/2012

Dated this *26th* day of February, 2015.

s/ Jon Wilson, supervisor for
Shayla Malone, Commission Coordinator
Colorado Civil Rights Division
1560 Broadway, Suite 1050
Denver, Colorado 50202

* * * *

REGISTER OF ACTIONS

Case Number:
2014CA00135

Court Location:
Court of Appeals

Case Type:
Civil - Agency

Referring Case Number:
0-CR20130008 - Civil Rights Commission

Case Caption:
Craig, C v Masterpiece Cake Shop

Appellate Case Number:
2015SC738 - Supreme Court

Date Filed	Organization	Filing Party	Document Title
* * * *			
01/23/2017	Colorado Court of Appeals	N/A	Notice
* * * *			
01/10/2017	Colorado Court of Appeals	N/A	Notice-Lower Court Record
* * * *			
04/25/2016 12:00 AM	Colorado Court of Appeals	N/A	MANDATE
* * * *			

08/13/2015 12:00 AM	Colorado Court of Appeals	N/A	Opinion
* * * *			
06/29/2015 12:00 AM	Colorado Court of Appeals	N/A	ORDER for additional time at oral arguments
* * * *			
06/12/2015 1:17 PM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Supplemental Authorities/Cites _____ Exhibits _____ Exhibits
06/12/2015 1:00 PM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Supplemental Authorities/Cites _____ Exhibits _____ Exhibits
* * * *			
04/07/2015 6:06 PM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Motion or Request-Oral Argument
* * * *			

03/31/2015 9:47 PM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Reply Brief
		****	
03/10/2015 2:30 PM	King and Greisen LLP	David Mullins, Charlie Craig	Amended Answer Briefs
		****	
02/17/2015 11:49 PM	CO Attorney General	Charles Craig, David Mullins	ANSWER BRIEF OF THE COLORADO CIVIL RIGHTS COMMN
		****	
02/13/2015 11:16 PM	King and Greisen LLP	Charles Craig, David Mullins	Answer Brief
		****	
01/09/2015 7:13 AM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Opening Brief
		****	

12/10/2014	Colorado Court of Appeals	N/A	NOTICE OF FILING SUPPLEMENT-AL RECORD
		****	
11/21/2014 8:57 AM	Colorado Court of Appeals	N/A	Order Re: Extension of Time for Opening Brief
11/14/2014 12:54 PM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Motion or Request-Extension of Time - Opening Brief ——— Motion or Request-Exhibit ——— Motion or Request-Exhibit ——— Motion or Request-Exhibit
10/23/2014 12:00 AM	Colorado Court of Appeals	N/A	NOTICE OF FILING OF RECORD ON APPEAL AND BRIEFING SCHEDULE
		****	

07/30/2014 3:32 PM	Law Office of Nicolle H Martin	Party Suppressed Party Suppressed	Designation of Record
* * * *			
07/22/2014 12:00 AM	Colorado Court of Appeals	N/A	ADVISEMENT OF FILING NOTICE OF APPEAL
07/16/2014 3:35 PM	Alliance Defending Freedom	Party Suppressed Party Suppressed	Notice of Appeal Attachments to Pleading- A Attachments to Pleading- B-1 Attachments to Pleading- C Attachments to Pleading- D Attachments to Pleading- B-2 Attachments to Pleading- B-3
* * * *			

REGISTER OF ACTIONS

Case Number:
2015SC000738

Court Location:
Supreme Court

Case Type:
Cert Petition - To COA - Civil

Referring Case Number:
2014CA1351 - Colorado Court of Appeals
0-CR20130008 - Civil Rights Commission

Case Caption:
Masterpiece Cakeshop v Craig, Charlie

Date Filed	Organization	Filing Party	Document Title
04/25/2016 12:00 AM	Colorado Supreme Court	N/A	ORDER OF COURT
		****	
11/13/2015 6:11 PM	Law Office of Nicolle H Martin	Masterpiece Cakeshop Inc. And Jack C. Phillips	Reply in Support of Petition ——— Supplemental Authorities/Cites
11/06/2015 3:03 PM	American Civil Liberties Union	Charlie Craig, David Mullins	Opposition to Petition

11/06/2015 8:31 AM	CO Attorney General	Party Suppressed	Opposition to Petition-Petition/ Writ of Certiorari
* * * *			
10/23/2015 10:20 AM	Law Office of Nicolle H Martin	Master-piece Cakeshop Inc. And Jack C. Phillips	Petition for Writ of Certiorari/ Petition for Writ of Certiorari _____ Exhibits-Exhibit _____ Exhibits-Exhibit _____ Exhibits-Exhibit _____ Exhibits-Exhibit _____ Exhibits-Exhibit _____ Exhibits-Exhibit _____ Exhibits-Exhibit _____ Exhibits-Exhibit
* * * *			

09/08/2015 12:00 AM	Colorado Supreme Court	N/A	ORDER OF COURT
09/02/2015 6:53 PM	Law Office of Nicolle H Martin	Master-piece Cakeshop Inc. And Jack C. Phillips	Motion or Request-Extension of Time-Petition for Writ of Certiorari Affidavit Motion or Request Entry of Appear-ance
****			

Colorado Civil Rights Division
AUG 23 2012
Denver, Colorado

Form I: Public Accommodations Intake Questionnaire

Colorado Civil Rights Division
1560 Broadway, Suite 1050
Denver, Colorado 80202
303-894-2997 / 800-262-4845 fax: 303-894-7830
www.dora.state.co.us/civil-rights

If you are Hearing Impaired, to call CCRD, dial: 711
Bilingual staff available (Spanish/English)

Please complete this form as fully as possible. You must provide all of the following information in order for your claim to be processed.

Your Information (Charging Party):

Name	*David Mullins, Charlie Craig, and all others similarly situated*				
Address	* * *				
City	* * *	State	*CO*	Zip Code	* * *
Mailing Address	*SAME*				
Phone: Home	(including area code) ----------		Phone: Work	(including area code) ----------	
Phone: Cell	(including area code) * * *		Fax Number	(including area code) * * *	
Email	* * *				
Do you have an attorney regarding this matter?	Yes ____ No _X_	If "Yes",	Name: Address: Telephone(s): Email:	X	

Place of Public Accommodation where the alleged discrimination occurred (Respondent):

Name of Company	*Masterpiece Cakeshop*				
Address	* * *				
City	* * *	State	*CO*	Zip Code	* * *
Mailing Address	*SAME*				
Telephone No.	(include area code) * * *		Fax	(include area code) ----------	
Contact Person	*Jack Phillips*		Title	*Owner*	
Website	*http://masterpiececakes.com*				
Other Names of Company	---------- ---				
Address where activity occurred	* * *				

Type of Public Accommodation where alleged discrimination occurred: (Mark box on left for those that apply)

	Bar		Restaurant
	Financial Institution		School or Educational Institution
	Health Club		Theater
	Hospital		Museum or Zoo
	Hotel or Motel		Public Club
X	Retail Store		Medical Clinic
	Public Transportation		Nursing Home
	Recreational Facility or Park		Library
X	Other Public Facility (please explain): *Bakery*		

What happened to you that was discriminatory?
(Mark box for all that apply AND provide the date.)

X	Terms of Service	DATE: *7/9/12*
X	Denial of Full and Equal Service	DATE: *7/9/12*
	Intimidation	DATE
	Failure to Accommodate	DATE:
X	Access	DATE: *7/9/12*
	Conditions	DATE:
	Privileges	DATE:
	Advertising	DATE:
	Retaliation	DATE:
	Other (describe):	DATE:

Why do you believe the Respondent discriminated against you (basis)? Mark the box at the LEFT of all that apply:

	Race (Identify):		Marital Status
	National Origin/ Ancestry (Identify):		Ancestry (Identify):
	Color		Creed (Identify):
	Disability:		Sex:
	❖ Mental		❖ Male
	❖ Physical		❖ Female
X	Sexual Orientation		❖ Pregnant
	❖ Transgender		

Retaliation

IMPORTANT: "Retaliation" is a when a Respondent discriminates against you, or any group with which you are affiliated, because you or that group opposed any discriminatory practice by the applicable Colorado civil rights statutes (Colorado Revised Statutes § 24-34-601, *et seq.*). This discrimination includes activities such as complaining of harassment, objecting to unlawful discrimination, or participating in a discrimination proceeding, based on your or another person's protected class as defined in the applicable Colorado civil rights statutes. Participating in a discrimination proceeding includes testifying in a civil rights-related investigation or trial, or filing a complaint of discrimination with the Respondent or with an agency such as the Colorado Civil Rights Division.

Having read the above explanation, were you retaliated against by the Respondent within the last sixty days?	Yes	No
		X

What was the proceeding in which you opposed discrimination?

_____

_____

_____

Witness Information

Please provide the names of any witnesses who can provide information regarding your specific claims of discrimination. While the Colorado Civil Rights Division will make its best effort to contact witnesses who have relevant testimony, please be aware that the best way to ensure that witness statements will be included in your file is to have each witness submit a written (preferably notarized) statement.

If you require more room, you may attach a sheet to this form. If you decide to submit additional sheets of paper regarding Witnesses, please identify them in the same manner as below.

Witness 1:

Name	*Deborah Munn*				
Address	* * *				
City	* * *	State	*WY*	Zip Code	* * *
Home Phone	(including area code) * * *		Work Phone	(including area code) ----------	
Cell Phone	(including area code) * * *		Fax	(including area code) ----------	
Email	* * *				
What can this witness tell us?	*Ms. Munn witnessed the entire event and communicated with the owner of Masterpiece Cakeshop after the initial discrimination occurred. Please see attached affidavit of Deborah Munn.*				

* * * *

Sworn Statement of Deborah Munn

On July 19 2012, I accompanied my son Charles Craig and his fiancé, Dave Mullins, to the Masterpiece Cakeshop in Lakewood, CO located at * * *. Dave and Charles planned to discuss various designs of a wedding reception cake. I was in Denver for a training conference that had concluded on July 19th and planned on leaving for my home in Wyoming the following morning.

When we walked into the bakery, we were greeted by a man at the counter, and he was told that we were there to discuss a wedding reception cake. He said he could help us and motioned for us to have a seat in an area on the other side of the counter. We sat at a small table that was located on the opposite side of the store that we had walked in. My son, Charlie had a folder that had pictures of different designs they had decided to discuss, when the man was told "it is for our wedding," the man said that he does not make wedding takes for commitment ceremonies, be does not make cakes for same sex couples. I just sat there for a minute, and I am sure I had a look of disbelief on my face. I looked toward my son, but didn't say anything. After a few seconds, we realized that he was not going to serve us and we stood up to leave. As we left the bakery, I noticed the family who was in the store when we entered, got up and left as well.

The following day, on July 20, 2012, I called Masterpiece Cakeshop and the man answered who identified himself as Jack Phillips, the owner. I introduced myself and said I was in his shop with my son Charlie Craig the day before, and that I wanted to ask him why he did what he did. I told him that I regretted never asking him why when we were in his shop. Mr. Phillips said he does not make cakes for illegal commitment ceremonies and that same sex weddings are illegal in Colorado. I told him that the cake that we wanted to purchase was for a reception wedding cake following a legal marriage that would take place in Massachusetts. Mr. Phillips went on to explain that he is a Christian and that it goes against his beliefs. I told him that I am a Christian also and that I felt he was judging people and by refusing their

requests that he was turning away two of God's children and that Jesus said to love one another. I then said I guess I have my answer now as to "why" and said we probably have nothing more to talk about. He agreed and said he was sorry. He also said he didn't realize they were getting married in a state where it was legal to marry, but that he still could not make their cake as it went against his beliefs.

I declare under penalty of perjury that the above statement is a true statement.

s/ Deborah Munn *8/20/2012*
Signature Date

Deborah Munn
* * *

Signed before me by Deborah Munn this 20th day of August 2012.

/s Sandra J. Stonecipher

Sandra J. Stonecipher – Notary Public
County of Fremont *State of Wyoming*
My Commission Expires July 1, 2013

Form II: Statement of Discrimination

Colorado Civil Rights Division
www.dora.state.co.us/civil-rights

Instructions: Draft a statement chronologically (timeline of events with dates) detailing the incidents that provide the basis for your complaint of civil rights discrimination. If you require additional sheets of paper, you may attach them to this form. You may also provide a sworn affidavit or other signed statement in lieu of completing the form below.

Your statement must be signed and dated and you may choose to have it notarized.

INSTRUCTIONS: Draft a statement, chronologically (timeline of events with dates) detailing the incidents that provide the basis for your complaint of discrimination. If you require additional sheets of paper, you may attach them to this form. You may also provide a sworn affidavit or other signed statement in lieu of completing the form below. Your statement must be signed and dated and you may choose to have it notarized.

For each incident, provide the following information:

1. A detailed chronological explanation of the events that led to the action that is the basis of this complaint;

2. Identify all persons who were involved. Identify each person by first and last name and job title. Explain that person's role(s) in the events;

3. Explain why you believe that your protected group status (race, color, creed, national origin, ancestry, sex, disability, marital status, or sexual orientation) was a .factor in the discriminatory activity.

Additionally, if relevant, answer the following questions completely and honestly:

a) Did you ever complain of discriminatory treatment? If yes, to whom and when. What was done, if anything?

b) Was anyone treated more favorably than you? Who? Provide information related to their protected classes (for example, if you are alleging race discrimination, what is the person's race?)

c) Did the place of public accommodation give you any reason for the adverse action? What was it?

In the section that follows, provide detailed information on why you believe that you have been discriminated against by the public accommodation, keeping the above instructions in mind.

Statement of Discrimination:

Charlie Craig, David Mullins and Deborah Munn (Charlie's Mother) went into Masterpiece Cakeshop on July 19, 2012 to order a wedding cake. Charlie and Dave are planning to travel to Massachusetts to marry and intended to have a wedding reception in their hometown of Denver when they returned. Deborah accompanied Charlie and Dave to the bakery to help them choose their cake. When Charlie and Dave sat down with the owner, Jack Phillips, and told him that the wedding cake for their wedding, Jack informed the couple that it was his standard business practice to not provide cakes to customers who were purchasing the cake for a same-sex wedding. Dave, Charlie and Deborah were extremely offended and let Mr. Phillips know they were upset about his refusal to serve them. Realizing that Mr. Phillips did not intend to provide them service, the group left the bakery.

The following day Deborah contacted Mr. Phillips on the telephone to obtain more information about why he had refused service to her son and his fiancé. Mr. Phillips stated that because he is a Christian he was opposed to making cakes for same-sex weddings for any same-sex couples. Mr. Phillips subsequently commented to a news organization that he had turned approximately six separate couples away for this same reason.

Statement of Discrimination (continued):

Did you ever complain of discriminatory treatment? _X_ Yes ___ No (check one)

- **If "yes", to whom and when.**
- **What was done, if anything?**

See previous statement

Was anyone treated more favorably than you? Who? Provide information related to their protected classes (for example, if you are alleging race discrimination, what is the person's race?).

Based on Mr. Phillips' statements, as the owner of Masterpiece Cakeshop, his policy is to refuse to provide cakes to same-sex couples seeking a cake for a wedding, but he does provide cakes for weddings of heterosexual couples.

Did the place of public accommodation give you any reason for the adverse action? What was it?

See previous statement and attached affidavit from Deborah Munn.

Specifically, what would you want the organization to do in order to resolve this charge?

We would want the organization to require Mr. Phillips to change his policy of discriminating against people based on their sexual orientation, including but not limited to discontinuing his practice of refusing to provide wedding cakes for same-sex weddings.

SIGNATURE

[Form II: Statement of Discrimination]

Signature: *s/ David J. Mullins* Date: *8/22/12*
Charging Party

s/ Charlie Craig *8/22/12*

IMPORTANT NOTICE: Submittal of these forms DOES NOT constitute filing a claim. Several additional steps must be taken and thus it is vital that you submit this initial documentation well before the deadline required by law.

Colorado Civil Rights Division
SEP – 5 2012
Denver, Colorado

CHARGE OF DISCRIMINATION The Privacy Act of 1974 affects this form. See Privacy Act Statement before completing this form.		FEPA Charge Number P20130007X
COLORADO CIVIL RIGHTS DIVISION		
Name *(Charging Party)* *David Mullins*		(Area Code) Telephone * * *
Street Address * * *	City, State, and Zip Code * * *	County * * *
Name *(Respondent)* *Masterpiece Cakeshop*	Number of Employees	(Area Code) Telephone * * *
Street Address * * *	City, State, and Zip Code * * *	County * * *
Discrimination Based On: *Sexual Orientation*		Date Most Recent Discrimination Occurred *July 19, 2012*

I. *Jurisdiction:* The Colorado Civil Rights Division has jurisdiction over the subject matter of this charge; that each named Respondent is subject to the jurisdiction of the Colorado Civil Rights Division and is covered by the provisions of the Colorado Revised Statutes (C.R.S. 1973, 24-34-301, *et. seq.*). as reenacted.

II. *Personal Harm:* That on or about July 19, 2012, the Respondent, a place of public accommodation, denied me the full and equal enjoyment of a place of accommodation on the basis of my sexual orientation, gay.

III. *Respondent's Position:* Unknown

IV. *Discrimination Statement:* I believe I was unlawfully discriminated against because: of my sexual orientation in violation of Title 24, Article 34. Part 6 (Discrimination in Places of Public Accommodation) of the Colorado Revised Statutes (C.R.S.). 1) On or about July 19, 2012, my significant other, my mother, and I visited the Respondent's establishment for the purpose of ordering a wedding cake. We were attended to by the store Owner. 2) While looking at pictures of the different cakes available, I informed the Owner that the cake was for my and my significant other's wedding. 3) The Owner replied that his policy is to deny service to individuals of our sexual orientation based on his religious

beliefs. 4) Based on his response and refusal to provide us service, we exited the store.

V. WHEREFORE, the Charging Party prays that the Colorado Civil Rights Division grant such relief as may exist within the Division's power and which the Division may deem necessary and proper.

I declare under penalty of perjury that the foregoing is true and correct.

Date: *9/4/12*	Charging Party/Complainant (Signature) *David J. Mullins*

F-67, Charge Form

CHARGE OF DISCRIMINATION The Privacy Act of 1974 affects this form. See Privacy Act Statement before completing this form.		FEPA Charge Number P20130008X
COLORADO CIVIL RIGHTS DIVISION		
Name *(Charging Party)*		(Area Code) Telephone
Charlie Craig		* * *
Street Address	City, State, and Zip Code	County
* * *	* * *	* * *
Name *(Respondent)*	Number of Employees	(Area Code) Telephone
Masterpiece Cakeshop		* * *
Street Address	City, State, and Zip Code	County
* * *	* * *	* * *
Discrimination Based On: *Sexual Orientation*		Date Most Recent Discrimination Occurred *July 19, 2012*

I. *Jurisdiction:* The Colorado Civil Rights Division has jurisdiction over the subject matter of this charge; that each named Respondent is subject to the jurisdiction of the Colorado Civil Rights Division and is covered by the provisions of the Colorado Revised Statutes (C.R.S. 1973, 24-34-301, *et. seq.*). as reenacted.

II. *Personal Harm:* That on or about July 19, 2012, the Respondent, a place of public accommodation, denied me the full and equal enjoyment of a place of accommodation on the basis of my sexual orientation, gay.

III. *Respondent's Position:* Unknown

IV. *Discrimination Statement:* I believe I was unlawfully discriminated against because: of my sexual orientation in violation of Title 24, Article 34. Part 6 (Discrimination in Places of Public Accommodation) of the Colorado Revised Statutes (C.R.S.). 1) On or about July 19, 2012, my significant other and I visited the Respondent's establishment for the purpose of ordering a wedding cake. We were attended to by the store Owner. 2) While looking at pictures of the different cakes available, I informed the Owner that the cake was for my and my significant other's wedding. 3) The Owner replied that his policy is to deny service to individuals of our sexual orientation based on his religious beliefs. 4) Based on his response and refusal to provide us service, we exited the store. 5) I believe that I was discriminated against based on my protected class.

V. WHEREFORE, the Charging Party prays that the Colorado Civil Rights Division grant such relief as may exist within the Division's power and which the Division may deem necessary and proper.

I declare under penalty of perjury that the foregoing is true and correct.	
Date: *9/14/12*	Charging Party/Complainant (Signature) *Charlie Craig*

F-67, Charge Form

2 of 2

September 21, 2012

Charge Number: P20130007X
David Mullins v. Masterpiece Cakeshop

REQUEST FOR INFORMATION

Please submit the following specific, written information and/or documentation by the deadline indicated. Your failure to do so may result in our issuing a finding based on the available evidence.

Please be advised that incomplete responses will not be accepted. If you, or your representative, believe some item is not relevant to the case, you must discuss your reasons with the investigator before deleting the information from your response.

1. Written Position Statement in response to the Charge of Discrimination to include:

    a. A specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.

    b. General nature of your business or organization and the service it provides.

    c. Your response should contain the name, job/position title; the Sexual Orientation of the official(s) who made the business decision which is the basis of this complaint.

d. Also, identify by job/position title and Sexual Orientation of any other employee(s) who was/were involved in this business decision.

e. Provide supporting documentation substantiating the reason(s) for the business decision.

2. Submit a true and complete list of all employees/members employed or affiliated on the date of the first membership, current title or position held including any board, trustee or committee assignment and Sexual Orientation identification.

3. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reason(s) for Charging Party's asserted denial of the goods, services, benefits or privileges offered. For each witness, give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and Sexual Orientation identification:

a. If a person named above is no longer a member/employee, provide the above requested identifying information, the affiliation separation date and a brief reason for the separation.

4. Copies of any documents, records, reports, policies, etc. relied upon in making the decision(s) in question including, but not limited policies/procedures concerning the reason for allegedly denying the Charging Party goods, services, benefits or privileges offered. If not available in written form, please provide a written explanation of how such situations have been handled in the past.

5. Provide any other information/documentation /witnesses you deem relevant to the merits of this complaint or which you believe will support your position.

6. Answer: Is the Charging Party currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?

* * * *

September 21, 2012

Charge Number: P20130008X
Charlie Craig v. Masterpiece Cakeshop

REQUEST FOR INFORMATION

Please submit the following specific, written information and/or documentation by the deadline indicated. Your failure to do so may result in our issuing a finding based on the available evidence.

Please be advised that incomplete responses will not be accepted. If you, or your representative, believe some item is not relevant to the case, you must discuss your reasons with the investigator before deleting the information from your response.

1. Written Position Statement in response to the Charge of Discrimination to include:

    a. A specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.

    b. General nature of your business or organization and the service it provides.

    c. Your response should contain the name, job/position title; the Sexual Orientation of the official(s) who made the business decision which is the basis of this complaint.

d. Also, identify by job/position title and Sexual Orientation of any other employee(s) who was/were involved in this business decision.

e. Provide supporting documentation substantiating the reason(s) for the business decision.

2. Submit a true and complete list of all employees/members employed or affiliated on the date of the first membership, current title or position held including any board, trustee or committee assignment and Sexual Orientation identification.

3. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reason(s) for Charging Party's asserted denial of the goods, services, benefits or privileges offered. For each witness, give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and Sexual Orientation identification:

a. If a person named above is no longer a member/employee, provide the above requested identifying information, the affiliation separation date and a brief reason for the separation.

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5. Provide any other information/documentation /witnesses you deem relevant to the merits of this complaint or which you believe will support your position.

6. Answer: Is the Charging Party currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?

* * * *

Colorado Civil Rights Division
OCT 22 2012
Denver, Colorado

October 22, 2012
Charge Number: P2012008X
Charlie Craig v. Masterpiece Cakeshop

Masterpiece Cakeshops's Responses to Request for Information

1. Written position statement in response to the Charge of Discrimination to include:

   a. A specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.

ANSWER: On or about July 19, 2012, two young men and an older woman came into my bakery. I had been in the back, out of the view of patrons. Another employee, Lisa Eldfrick was helping another customer and she said she would be right with them. The two young men sat down at a small table where photo albums of my work on wedding cakes are kept. They may have been looking at my work, but I am not sure. I came out of the back and was able to assist them before Ms. Eldfrick. I introduced myself to them, and they did the same. I sat down across from them and I believe Mr. Mullins said he needed a wedding cake or he was there to pick out a wedding cake. Mr. Craig quickly added that it

was for their wedding. I quickly responded that I do not create wedding cakes for same-sex weddings at which time both men stood up and exited the store through different doors. There may have been a moment where the three of us were talking over each other, and I think I stated that I could create birthday cakes, shower cakes or any other cakes for them. The entire interaction lasted no more than 20 seconds.

b. General nature of your business or organization and the service it provides.

ANSWER: My bakery provides outstanding cake creations for weddings, birthdays, baptisms, holidays, etc. I also make baked goods like cookies and brownies.

c. Your response should contain the name, job/position title; the Sexual Orientation of the official(s) who made the business decision which is the basis of this complaint.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection - Jack Phillips, Owner, Heterosexual.

d. Also, identify by job/position title and Sexual Orientation of any other employees(s) who was/were involved in this business decision.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection, no one else was involved in this business decision.

e. Provide supporting documentation substantiating the reason(s) for the business decision.

ANSWER: Objection, vague and overbroad. Without waiving said objection, there is no supporting documentation related to the business decision.

2. Submit a true and complete list of all employees/members employed or affiliated on the date of the alleged action. For each person named, submit their current mailing address, telephone number, date of first membership, current title or position held including any board, trustee, or committee assignment and Sexual Orientation identification.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection:

Jack Phillips -- * * *;

* * * *

Lisa Eldfrick -- * * *;

* * * *

3. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reasons for Charging Party's asserted denial of the goods, services, benefits or privileges offered. For each witness, give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and Sexual Orientation.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection, Lisa Eldfrick -- * * *. Ms. Eldfrick was helping another customer at the time of my encounter with Mr. Craig. She may or may not have personal, direct knowledge of that encounter.

a. If a person named above is no longer a member/employee, provide the above requested identifying information, the affiliation [sic] separation date and a brief reason for the separation.

ANSWER: Not applicable.

4. Copies of any documents, records, reports, policies, etc. relied upon in making the decision(s) in question including, but not limited [sic] policies/procedures concerning the reason for allegedly denying the Charging Party goods, services, benefits or privileges offered. If not available in written form, please provide a written explanation of how such situations have been handled in the past.

ANSWER: No such written documentation is available. This situation has arisen approximately five to six times in the past, wherein a customer has requested a wedding cake for a same-sex wedding or wedding reception. In those situations, it was handled in the same way I handled this situation; I advised the customer that I could not create a cake for a same-sex wedding ceremony or reception based on my religious beliefs.

5. Provide any other information/documentation/ witnesses you deem relevant to the merits of this complaint or which you believe will support your position.

ANSWER: A woman who represented herself as the mother of one of the Charging Parties phoned me the day after the events complained of. She asked me if I was refusing to make a wedding cake for her son because of my religious beliefs and I responded yes. I also told her my decision rested in part on the fact that Colorado does not recognize same-sex marriages.

6. Answer: Is the Charging Party currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?

ANSWER: Absolutely, Mr. Craig is welcome in my store to purchase any of my creations, with the exception of a wedding cake for his same-sex marriage celebration or reception.

/s Jack Phillips
Jack Phillips, Masterpiece Cakeshop

As to Objections:

Nicolle H. Martin, Esq.
7175 W. Jefferson Ave., Suite 4000
Lakewood, CO 80235

/s Nicolle H. Martin, Esq.
Nicolle H. Martin, Esq.

Colorado Civil Rights Division
OCT 22 2012
Denver, Colorado

October 22, 2012
Charge Number: P2012008X
David Mullins v. Masterpiece Cakeshop

Masterpiece Cakeshops's Responses to Request for Information

1. Written position statement in response to the Charge of Discrimination to include:

a. A specific response to the action complained of and the specific and detailed sequence of events that led to the alleged denial of the goods, services, benefits, or privileges offered.

ANSWER: On or about July 19, 2012, two young men and an older woman came into my bakery. I had been in the back, out of the view of patrons. Another employee, Lisa Eldfrick was helping another customer and she said she would be right with them. The two young men sat down at a small table where photo albums of my work on wedding cakes are kept. They may have been looking at my work, but I am not sure. I came out of the back and was able to assist them before Ms. Eldfrick. I introduced myself to them, and they did the same. I sat down across from them and I believe Mr. Mullins said he needed a wedding cake or he was there to pick out a wedding cake. Mr. Craig quickly added that it was for their wedding. I quickly responded that I

do not create wedding cakes for same-sex weddings at which time both men stood up and exited the store through different doors. There may have been a moment where the three of us were talking over each other, and I think I stated that I could create birthday cakes, shower cakes or any other cakes for them. The entire interaction lasted no more than 20 seconds.

b. General nature of your business or organization and the service it provides.

ANSWER: My bakery provides outstanding cake creations for weddings, birthdays, baptisms, holidays, etc. I also make baked goods like cookies and brownies.

c. Your response should contain the name, job/position title; the Sexual Orientation of the official(s) who made the business decision which is the basis of this complaint.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection - Jack Phillips, Owner, Heterosexual.

d. Also, identify by job/position title and Sexual Orientation of any other employees(s) who was/were involved in this business decision.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection, no one else was involved in this business decision.

e. Provide supporting documentation substantiating the reason(s) for the business decision.

ANSWER: Objection, vague and overbroad. Without waiving said objection, there is no supporting documentation related to the business decision.

2. Submit a true and complete list of all employees/members employed or affiliated on the date of the alleged action. For each person named, submit their current mailing address, telephone number, date of first membership, current title or position held including any board, trustee, or committee assignment and Sexual Orientation identification.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection:

Jack Phillips -- * * *;

* * * *

Lisa Eldfrick -- * * *;

* * *

3. Provide written statements from any individual who has personal, direct knowledge of either the issues raised in the administrative complaint; and/or the reasons for Charging Party's asserted denial of the goods, services, benefits or privileges offered. For each witness, give their full and complete name (correct spelling or more fully identify if needed), organization position/title, if applicable, mailing address, telephone number and Sexual Orientation.

ANSWER: Objection as to sexual orientation, relevance. Without waiving said objection, Lisa Eldfrick -- * * *. Ms. Eldfrick was helping another customer at the time of my encounter with Mr. Craig. She may or may not have personal, direct knowledge of that encounter.

a. If a person named above is no longer a member/employee, provide the above requested identifying information, the affiliation [sic] separation date and a brief reason for the separation.

ANSWER: Not applicable.

4. Copies of any documents, records, reports, policies, etc. relied upon in making the decision(s) in question including, but not limited [sic] policies/procedures concerning the reason for allegedly denying the Charging Party goods, services, benefits or privileges offered. If not available in written form, please provide a written explanation of how such situations have been handled in the past.

ANSWER: No such written documentation is available. This situation has arisen approximately five to six times in the past, wherein a customer has requested a wedding cake for a same-sex wedding or wedding reception. In those situations, it was handled in the same way I handled this situation; I advised the customer that I could not create a cake for a same-sex wedding ceremony or reception based on my religious beliefs.

5. Provide any other information/documentation/ witnesses you deem relevant to the merits of this complaint or which you believe will support your position.

ANSWER: A woman who represented herself as the mother of one of the Charging Parties phoned me the day after the events complained of. She asked me if I was refusing to make a wedding cake for her son because of my religious beliefs and I responded yes. I also told her my decision rested in part on the fact that Colorado does not recognize same-sex marriages.

6. Answer: Is the Charging Party currently welcome at your place of business or to become affiliated with your organization? If not, why not? If yes, but only if certain conditions are met or only under certain conditions, what are those conditions?

ANSWER: Absolutely, Mr. Mullins is welcome in my store to purchase any of my creations, with the exception of a wedding cake for his same-sex marriage celebration or reception.

/s Jack Phillips
Jack Phillips, Masterpiece Cakeshop

As to Objections:

Nicolle H. Martin, Esq.
7175 W. Jefferson Ave., Suite 4000
Lakewood, CO 80235

/s Nicolle H. Martin, Esq.
Nicolle H. Martin, Esq.

* * * *

Charge No. P20130008X

Charlie Craig
* * * Charging Party

Masterpiece Cakeshop
* * * Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is sufficient evidence to support the Charging Party's claim of denial of full and equal enjoyment of a place of public accommodation based on his sexual orientation. As such, a **Probable Cause** determination hereby is issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about July 19, 2012, the Respondent, a place of public accommodation, denied him the full and equal enjoyment of a place of accommodation on the basis of his sexual orientation (gay). The Respondent avers that its standard business practice is to deny service to same-sex couples based on religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position,

but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

The Charging Party states that on or about July 19, 2012, he visited the Respondent's place of business for the purpose of ordering a wedding cake with his significant other, David Mullins ("Mullins"), and his mother Deborah Munn ("Munn"). The Charging Party and his partner planned to travel to Massachusetts to marry and intended to have a wedding reception in Denver upon their return. The Charging Party and his significant other were attended to by the Respondent's Owner, Jack Phillips ("Phillips"). The Charging Party asserts that while viewing photos of the available wedding cakes, he informed the owner that the cake was for him and his significant other. The Charging Party states that in response, Phillips replied that his standard business practice is to deny service to same-sex couples based on his religious beliefs. The Charging Party states that based on Phillips response and refusal to provide service, the group left the Respondent's place of business.

The Charging Party states that on July 20, 2012, in an effort to obtain more information as to why her son was refused service, Munn telephoned Phillips. During this telephone conversation, Phillips stated that "because he is a Christian, he was opposed to making cakes for same-sex weddings for any same-sex couples."

The record reflects that Phillips subsequently commented to various news organizations, that he had turned approximately six same-sex couples away for this same reason. The Respondent has not argued that it is a business that is principally used for religious purposes.

Respondent Owner Jack Phillips ("Phillips") states that on July 19, 2012, the Charging Party, Mullins, and Munn visited his bakery and stated that they wished to purchase a wedding cake. Phillips asserts that he informed the Charging Party that he does not create wedding cakes for same-sex weddings. According to Phillips, this interaction lasted no more than 20 seconds. Phillips states that the Charging Party, Mullins, and Munn subsequently exited the Respondent's place of business. The Respondents avers that on July 20, 2012, during a conversation with Munn, he informed her that he refused to create a wedding cake for her son based on his religious beliefs and because Colorado does not recognize same-sex marriages.

The Respondent states that the aforementioned situation has occurred on approximately five or six past occasions. The Respondent contends that in those situations, he advised potential customers that

he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. Respondent owner Phillips adds that he told the Charging Party and his partner that he could create birthday cakes, shower cakes, or any other cakes for them. The Respondent asserts that this decision rested in part based on the fact that the state of Colorado does not recognize same sex marriages.

In an affidavit provided by the Charging Party during the Division's investigation, Stephanie Schmalz ("S. Schmalz") states that on January 16, 2012, she and her partner Jeanine Schmalz ("J. Schmalz") visited the Respondent's place of business to purchase cupcakes for their family commitment ceremony. S. Schmalz states that when she confirmed that the cupcakes were to be part of a celebration for her and her partner, the Respondent's female representative stated that she would not be able to place the order because "the Respondent had a policy of not selling baked goods to same-sex couples for this type of event." Following her departure from the Respondent's place of business, S. Schmalz telephoned the Respondent to clarify its policies. During this telephone conversation, S. Schmalz learned that the female representative was an owner of the business and that it was the Respondent's stated policy not to provide cakes or other baked goods to same-sex couples for wedding-type celebrations.

S. Schmalz subsequently posted a review on the website Yelp describing her experiences with the Respondent. An individual identifying himself as "Jack P. of Masterpiece Cakeshop" posted a reply to Schmalz's review, in which he stated that "...a

wedding for [gays and lesbians] is something that, so far, not even the State of Colorado will allow" and did not dispute that he refuses to serve gay and lesbian couples planning weddings or commitment celebrations.

S. Schmalz states that after learning of the Respondent's policy, she later contacted the Respondent's place of business and spoke to Phillips. During this conversation, S. Schmalz claimed to be a dog breeder and stated that she planned to host a "dog wedding" between one of her dogs and a neighbor's dog. Phillips did not object to preparing a cake for S. Schmalz's "dog wedding."

In an affidavit provided by the Charging Party during the Division's investigation, Samantha Saggio ("Saggio") states that on May 19, 2012, she visited the Respondent's place of business with her partner, Shann Chavez ("Chavez") to look at cakes for their planned commitment ceremony. Saggio states that upon learning that the cake would be for the two women, the Respondent's female representative stated that the Respondent would be unable to provide a cake because "according to the company, Saggio and Chavez were doing something 'illegal.'"

In an affidavit provided by the Charging Party during the Division's investigation, Katie Allen ("Allen") and Alison Sandlin ("Sandlin") state that on August 6, 2005, they visited the Respondent's place of business to taste cakes for their planned commitment ceremony. Allen states that upon learning of the women's intent to wed one another, the Respondent's female representative stated, "We can't do it then"

and explained that the Respondent had established a policy of not taking cake orders for same-sex weddings, "because the owners believed in the word of Jesus."

Allen and Sandlin state that they later spoke directly with Phillips. During this conversation, Phillips stated that "he is not willing to make a cake for a same-sex commitment ceremony, just as he would not be willing to make a pedophile cake."

Discriminatory Denial of Full and Equal Enjoyment of Services – Sexual Orientation (gay)

To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied a type of service usually offered by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his sexual orientation. The Charging Party visited the Respondent's place of business for the purpose of ordering a wedding cake for his wedding reception. The evidence indicates that the Charging Party and his partner were otherwise qualified to receive services or goods from the Respondent's bakery. During this visit, the Respondent informed

the Charging Party that his standard business practice is to deny baking wedding cakes to same-sex couples based on his religious beliefs. The evidence shows that on multiple occasions, the Respondent turned away potential customers on the basis of their sexual orientation, stating that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. The Respondent's representatives stated that it would be unable to provide a cake because "according to the company, [the potential same-sex customers] were doing something 'illegal,'" and "because the owners believed in the word of Jesus." The Respondent indicates it will bake other goods for same sex couples such as birthday cakes, shower cakes or any other type of cake, but not a wedding cake. As such, the evidence shows that the Respondent refused to allow the Charging Party and his partner to patronize its business in order to purchase a wedding cake under circumstances that give rise to an inference of unlawful discrimination based on the Charging Party's sexual orientation.

Based on the evidence contained above, I determine that the Respondent has violated C.R.S. 24-34-402, as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division

s/ Jennifer McPherson
Steven Chavez, Director
or Authorized Designee

3/5/2013
Date

* * * *

* * * *

Charge No. P20130007X

David Mullins
* * * Charging Party

Masterpiece Cakeshop
* * * Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is sufficient evidence to support the Charging Party's claim of denial of full and equal enjoyment of a place of public accommodation based on his sexual orientation. As such, a **Probable Cause** determination hereby is issued.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about July 19, 2012, the Respondent, a place of public accommodation, denied him the full and equal enjoyment of a place of accommodation on the basis of his sexual orientation (gay). The Respondent avers that its standard business practice is to deny service to same-sex couples based on religious beliefs.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position,

but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P.2d 288 (Colo. 2000).

The Respondent is a bakery that provides cakes and baked goods to the public, and operates within the state of Colorado.

The Charging Party states that on or about July 19, 2012, he visited the Respondent's place of business for the purpose of ordering a wedding cake with his significant other, Charlie Craig ("Craig"), and his mother Deborah Munn ("Munn"). The Charging Party and his partner planned to travel to Massachusetts to marry and intended to have a wedding reception in Denver upon their return. The Charging Party and his significant other were attended to by the Respondent's Owner, Jack Phillips ("Phillips"). The Charging Party asserts that while viewing photos of the available wedding cakes, he informed the owner that the cake was for him and his significant other. The Charging Party states that in response, Phillips replied that his standard business practice is to deny service to same-sex couples based on his religious beliefs. The Charging Party states that based on Phillips response and refusal to provide service, the group left the Respondent's place of business.

The Charging Party states that on July 20, 2012, in an effort to obtain more information as to why her son was refused service, Munn telephoned Phillips. During this telephone conversation, Phillips stated that "because he is a Christian, he was opposed to making cakes for same-sex weddings for any same-sex couples."

The record reflects that Phillips subsequently commented to various news organizations, that he had turned approximately six same-sex couples away for this same reason. The Respondent has not argued that it is a business that is principally used for religious purposes.

Respondent Owner Jack Phillips ("Phillips") states that on July 19, 2012, the Charging Party, Craig, and Munn visited his bakery and stated that they wished to purchase a wedding cake. Phillips asserts that he informed the Charging Party that he does not create wedding cakes for same-sex weddings. According to Phillips, this interaction lasted no more than 20 seconds. Phillips states that the Charging Party, Craig, and Munn subsequently exited the Respondent's place of business. The Respondents avers that on July 20, 2012, during a conversation with Munn, he informed her that he refused to create a wedding cake for her son based on his religious beliefs and because Colorado does not recognize same-sex marriages.

The Respondent states that the aforementioned situation has occurred on approximately five or six past occasions. The Respondent contends that in those situations, he advised potential customers that

he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. He adds that he told the Charging Party and his partner that he could create birthday cakes, shower cakes, or any other cakes for them. The Respondent asserts that this decision rested in part based on the fact that the state of Colorado does not recognize same sex marriages.

In an affidavit provided by the Charging Party during the Division's investigation, Stephanie Schmalz ("S. Schmalz") states that on January 16, 2012, she and her partner Jeanine Schmalz ("J. Schmalz") visited the Respondent's place of business to purchase cupcakes for their family commitment ceremony. S. Schmalz states that when she confirmed that the cupcakes were to be part of a celebration for her and her partner, the Respondent's female representative stated that she would not be able to place the order because "the Respondent had a policy of not selling baked goods to same-sex couples for this type of event." Following her departure from the Respondent's place of business, S. Schmalz telephoned the Respondent to clarify its policies. During this telephone conversation, S. Schmalz learned that the female representative was an owner of the business and that it was the Respondent's stated policy not to provide cakes or other baked goods to same-sex couples for wedding-type celebrations.

S. Schmalz subsequently posted a review on the website Yelp describing her experiences with the Respondent. An individual identifying himself as "Jack P. of Masterpiece Cakeshop" posted a reply to Schmalz's review, in which he stated that "...a

wedding for [gays and lesbians] is something that, so far, not even the State of Colorado will allow" and did not dispute that he refuses to serve gay and lesbian couples planning weddings or commitment celebrations.

S. Schmalz states that after learning of the Respondent's policy, she later contacted the Respondent's place of business and spoke to Phillips. During this conversation, S. Schmalz claimed to be a dog breeder and stated that she planned to host a "dog wedding" between one of her dogs and a neighbor's dog. Phillips did not object to preparing a cake for S. Schmalz's "dog wedding."

In an affidavit provided by the Charging Party during the Division's investigation, Samantha Saggio ("Saggio") states that on May 19, 2012, she visited the Respondent's place of business with her partner, Shann Chavez ("Chavez") to look at cakes for their planned commitment ceremony. Saggio states that upon learning that the cake would be for the two women, the Respondent's female representative stated that the Respondent would be unable to provide a cake because "according to the company, Saggio and Chavez were doing something 'illegal.'"

In an affidavit provided by the Charging Party during the Division's investigation, Katie Allen ("Allen") and Alison Sandlin ("Sandlin") state that on August 6, 2005, they visited the Respondent's place of business to taste cakes for their planned commitment ceremony. Allen states that upon learning of the women's intent to wed one another, the Respondent's female representative stated, "We can't do it then"

and explained that the Respondent had established a policy of not taking cake orders for same-sex weddings, "because the owners believed in the word of Jesus."

Allen and Sandlin state that they later spoke directly with Phillips. During this conversation, Phillips stated that "he is not willing to make a cake for a same-sex commitment ceremony, just as he would not be willing to make a pedophile cake."

Discriminatory Denial of Full and Equal Enjoyment of Services – Sexual Orientation (gay)

To prevail on a claim of discriminatory denial of full and equal enjoyment of services, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought goods, services, benefits or privileges from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied a type of service usually offered by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his sexual orientation. The Charging Party visited the Respondent's place of business for the purpose of ordering a wedding cake for his wedding reception. The evidence indicates that the Charging Party and his partner were otherwise qualified to receive services or goods from the Respondent's bakery. During this visit, the Respondent informed

the Charging Party that his standard business practice is to deny baking wedding cakes to same-sex couples based on his religious beliefs. The evidence shows that on multiple occasions, the Respondent turned away potential customers on the basis of their sexual orientation, stating that he could not create a cake for a same-sex wedding ceremony or reception based on his religious beliefs. The Respondent's representatives stated that it would be unable to provide a cake because "according to the company, [the potential same-sex customers] were doing something 'illegal,'" and "because the owners believed in the word of Jesus." The Respondent indicates it will bake other goods for same sex couples such as birthday cakes, shower cakes or any other type of cake, but not a wedding cake. As such, the evidence shows that the Respondent refused to allow the Charging Party and his partner to patronize its business in order to purchase a wedding cake under circumstances that give rise to an inference of unlawful discrimination based on the Charging Party's sexual orientation.

Based on the evidence contained above, I determine that the Respondent has violated C.R.S. 24-34-402, as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(II), as re-enacted, the Parties hereby are ordered by the Director to proceed to attempt amicable resolution of these charges by compulsory mediation. The Parties will be contacted by the agency to schedule this process.

On Behalf of the Colorado Civil Rights Division

s/ Jennifer McPherson
Steven Chavez, Director
or Authorized Designee

3/5/2013
Date

* * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG, Complainant, vs. MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, Respondents.	▲COURT USE ONLY▲ CASE NUMBER 2013 CR _____
NOTICE OF HEARING AND FORMAL COMPLAINT	

YOU ARE HEREBY NOTIFIED pursuant to § 24-34-306(4), C.R.S. (2012), that a hearing will be held before an Administrative Law Judge on behalf of the Colorado Civil Rights Commission at 9:00 a.m. on the 23rd day of September, 2013, on the fourteenth floor at the Office of Administrative Court, 633 17th Street, Denver, Colorado, to determine whether Respondents violated § 24-34-601(2), C.R.S. (2012), when it denied Complainant full and equal enjoyment of its services, facilities, privileges, advantages and accommodations at its place of business because of Complainant's sexual orientation.

Pursuant to the authority set forth in sections 24-34-305(1)(d) and 24-34-306(4), C.R.S. (2012), the Colorado Civil Rights Commission, having determined that the circumstances warrant a hearing, hereby charges and alleges:

1. Respondent Masterpiece Cakeshop, Inc. ("Masterpiece Cakeshop"), is a place of public accommodation as defined by § 24-34-601(1), C.R.S. (2012), and is therefore subject to the jurisdiction of the Colorado Civil Rights Commission.

2. Respondent Jack C. Phillips ("Phillips") is the owner of Masterpiece Cakeshop and was the person who refused, withheld from, or denied to Complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Masterpiece Cakeshop in violation of § 24-34-601(2), C.R.S. (2012), and is therefore subject to the jurisdiction of the Colorado Civil Rights Commission.

3. Timeliness and all other jurisdictional and procedural requirements of title 24, article 34, parts 3 and 4 have been satisfied.

4. On or about July 19, 2012, Charlie Craig ("Complainant") was a patron in Respondents' place of business when he was subjected to a discriminatory practice and unlawful conduct by Respondents because of his sexual orientation.

5. Respondent Masterpiece Cakeshop is a Colorado corporation.

6. Masterpiece Cakeshop was formed by Jack C. Phillips and James F. Sanders on or about December 2, 1992, with Phillips as President.

7. Masterpiece Cakeshop operates in Lakewood, Colorado, as a bakery supplying cakes for special occasions.

8. At all times relevant to this Complaint, Phillips was represented as and was the owner of Masterpiece Cakeshop.

9. On or about July 19, 2012, Complainant was present at Respondent's bakery at * * *, with his fiancé, David Mullins, and Complainant's mother, Deborah Munn.

10. Complainant and Mullins planned to travel to Massachusetts to get married, then have a wedding reception upon their return to Denver, Colorado.

11. Complainant and Mullins were attended to by Phillips.

12. While Complainant and Mullins were looking at pictures of available wedding cakes, they informed Phillips that the cake was for them.

13. Upon learning that the wedding cake was for Complainant and Mullins, Phillips said that his standard business practice is to deny service to same-sex couples.

14. Based upon Phillips' response and refusal to provide service because of Complainant's sexual orientation, Complainant, Mullins, and Munn left the business.

15. On July 20, 2012, in an effort to obtain more information about why Phillips refused service to Complainant, Munn called Phillips.

16. Phillips informed Munn that because he was a Christian, he was opposed to making wedding cakes for any same-sex couples.

17. Respondents have not asserted that Masterpiece Cakeshop is a business that is principally used for religious purposes.

18. Phillips stated that on July 19, 2012, Complainant, Craig, and Munn visited his bakery and said they wished to purchase a wedding cake.

19. Phillips stated that he told Complainant and his group that he does not create wedding cakes for same-sex weddings.

20. Phillips stated that during the July 20, 2012 telephone conversation with Munn, he told her that he refused to sell a wedding cake to her son based upon his religious beliefs against same-sex marriage and because Colorado does not recognize same-sex marriages.

21. Phillips stated that he could sell a birthday cake, shower cake, or other cake for Complainant and Craig, but not a wedding cake.

22. Upon information and belief, Respondent creates wedding cakes for heterosexual couples.

23. Upon information and belief, Respondent was contacted by a patron who claimed to be a dog breeder and wanted to host a "dog wedding" between two dogs, and Respondent did not object to creating a "dog wedding" cake.

24. Respondent's action of refusing to sell a wedding cake to Complainant due to his sexual orientation is a violation of § 24-34-601(2), C.R.S. (2012).

25. Complainant filed a charge of discrimination with the Colorado Civil Rights Division on September 4, 2012.

26. On or about March 5, 2013, the Director of the Colorado Civil Rights Division, through an Authorized Designee, found probable cause that Respondents had discriminated against Complainant.

27. Efforts to settle the charge of discrimination have been unsuccessful.

The Complainant seeks the following relief:

1. That Respondents be ordered to allow complainant the full use and enjoyment of their services, facilities, privileges, advantages and accommodations and the opportunity to participate in all activities of its cakeshop and restore to him all benefits, rights, and privileges he would have received as a patron effective immediately.

2. That Respondents be ordered to cease and desist their practices of discriminating against homosexual customers because of their sexual orientation and to immediately discontinue their policy and practice of refusing to sell wedding cakes to same-sex couples.

3. That Respondents be ordered to adopt a corrective policy which will allow complainant and other similarly situated homosexual persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of Masterpiece Cakeshop.

4. That Respondents be ordered to disseminate to the public its policy that the use of the facility, and all other goods, services, benefits and privileges of Masterpiece Cakeshop will be provided without regard to sexual orientation, disability, sex, race, color, creed, marital status, national origin, or ancestry.

5. That Respondents be ordered to report to the Colorado Civil Rights Commission all remedial action taken to eliminate the discriminatory practices until such time as it has been established that such discriminatory practices have ceased.

6. That Respondents be ordered not to retaliate against Complainant in any way.

7. That Respondents be ordered to provide any other relief which may be available to Complainant by virtue of operation of law and any other relief the

Colorado Civil Rights Commission deems just and proper.

Respondents may file a verified answer prior to the date of the hearing. The hearing will be conducted pursuant to sections 24-34-306 and 24-4-105, C.R.S. (2012). Failure to answer the complaint at hearing may result in entry of default judgment against the Respondents.

Dated this 31st day of May, 2013.

BY THE COMMISSION:

s/Susie Velasquez
Commissioner

* * * *

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17th Street, Suite 1300 Denver, Colorado 80202	
DAVID MULLINS, Complainant, vs. MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, Respondents.	▲COURT USE ONLY▲ CASE NUMBER 2013 CR _____
NOTICE OF HEARING AND FORMAL COMPLAINT	

YOU ARE HEREBY NOTIFIED pursuant to § 24-34-306(4), C.R.S. (2012), that a hearing will be held before an Administrative Law Judge on behalf of the Colorado Civil Rights Commission at 9:00 a.m. on the 23rd day of September, 2013, on the fourteenth floor at the Office of Administrative Court, 633 17th Street, Denver, Colorado, to determine whether Respondents violated § 24-34-601(2), C.R.S. (2012), when it denied Complainant full and equal enjoyment of its services, facilities, privileges, advantages and accommodations at its place of business because of Complainant's sexual orientation.

Pursuant to the authority set forth in sections 24-34-305(1)(d) and 24-34-306(4), C.R.S. (2012), the Colorado Civil Rights Commission, having determined that the circumstances warrant a hearing, hereby charges and alleges:

1. Respondent Masterpiece Cakeshop, Inc. ("Masterpiece Cakeshop"), is a place of public accommodation as defined by § 24-34-601(1), C.R.S. (2012), and is therefore subject to the jurisdiction of the Colorado Civil Rights Commission.

2. Respondent Jack C. Phillips ("Phillips") is the owner of Masterpiece Cakeshop and was the person who refused, withheld from, or denied to Complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of Masterpiece Cakeshop in violation of § 24-34-601(2), C.R.S. (2012), and is therefore subject to the jurisdiction of the Colorado Civil Rights Commission.

3. Timeliness and all other jurisdictional and procedural requirements of title 24, article 34, parts 3 and 4 have been satisfied.

4. On or about July 19, 2012, David Mullins ("Complainant") was a patron in Respondents' place of business when he was subjected to a discriminatory practice and unlawful conduct by Respondents because of his sexual orientation.

5. Respondent Masterpiece Cakeshop is a Colorado corporation.

6. Masterpiece Cakeshop was formed by Jack C. Phillips and James F. Sanders on or about December 2, 1992, with Phillips as President.

7. Masterpiece Cakeshop operates in Lakewood, Colorado, as a bakery supplying cakes for special occasions.

8. At all times relevant to this Complaint, Phillips was represented as and was the owner of Masterpiece Cakeshop.

9. On or about July 19, 2012, Complainant was present at Respondent's bakery at * * *, with his fiancé, Charlie Craig, and Craig's mother, Deborah Munn.

10. Complainant and Craig planned to travel to Massachusetts to get married, then have a wedding reception upon their return to Denver, Colorado.

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14. Based upon Phillips' response and refusal to provide service because of Complainant's sexual orientation, Complainant, Craig, and Munn left the business.

15. On July 20, 2012, in an effort to obtain more information about why Phillips refused service to Complainant, Munn called Phillips.

16. Phillips informed Munn that because he was a Christian, he was opposed to making wedding cakes for any same-sex couples.

17. Respondents have not asserted that Masterpiece Cakeshop is a business that is principally used for religious purposes.

18. Phillips stated that on July 19, 2012, Complainant, Craig, and Munn visited his bakery and said they wished to purchase a wedding cake.

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24. Respondent's action of refusing to sell a wedding cake to Complainant due to his sexual orientation is a violation of § 24-34-601(2), C.R.S. (2012).

25. Complainant filed a charge of discrimination with the Colorado Civil Rights Division on September 4, 2012.

26. On or about March 5, 2013, the Director of the Colorado Civil Rights Division, through an Authorized Designee, found probable cause that Respondents had discriminated against Complainant.

27. Efforts to settle the charge of discrimination have been unsuccessful.

The Complainant seeks the following relief:

1. That Respondents be ordered to allow complainant the full use and enjoyment of their services, facilities, privileges, advantages and accommodations and the opportunity to participate in all activities of its cakeshop and restore to him all benefits, rights, and privileges he would have received as a patron effective immediately.

2. That Respondents be ordered to cease and desist their practices of discriminating against homosexual customers because of their sexual orientation and to immediately discontinue their policy and practice of refusing to sell wedding cakes to same-sex couples.

3. That Respondents be ordered to adopt a corrective policy which will allow complainant and other similarly situated homosexual persons the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of Masterpiece Cakeshop.

4. That Respondents be ordered to disseminate to the public its policy that the use of the facility, and all other goods, services, benefits and privileges of Masterpiece Cakeshop will be provided without regard to sexual orientation, disability, sex, race, color, creed, marital status, national origin, or ancestry.

5. That Respondents be ordered to report to the Colorado Civil Rights Commission all remedial action taken to eliminate the discriminatory practices until such time as it has been established that such discriminatory practices have ceased.

6. That Respondents be ordered not to retaliate against Complainant in any way.

7. That Respondents be ordered to provide any other relief which may be available to Complainant by virtue of operation of law and any other relief the

Colorado Civil Rights Commission deems just and proper.

Respondents may file a verified answer prior to the date of the hearing. The hearing will be conducted pursuant to sections 24-34-306 and 24-4-105, C.R.S. (2012). Failure to answer the complaint at hearing may result in entry of default judgment against the Respondents.

Dated this 31st day of May, 2013.

BY THE COMMISSION:

s/Susie Velasquez
Commissioner

* * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents.	▲COURT USE ONLY▲ **CASE NUMBER:** **CR 2013-0008**

ORDER OF CONSOLIDATION

Upon the unopposed motion of Counsel in Support of the Complaint, and review of the case files in Case Nos. CR 2013-0008 and CR 2013-0009, it is hereby ordered that:

The aforementioned cases shall be consolidated under Rule 7 of the Rules of Procedure of the Office of Administrative Courts (1 CCR 104-1). The caption of the consolidated cases shall be as it appears on this order.

Dated this 27 day of June, 2013.

s/ L. Broniak
LAURA A. BRONIAK
Administrative Law Judge

* * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents.	▲COURT USE ONLY▲ **CASE NUMBER:** **CR 2013-0008**

ORDER GRANTING MOTION TO INTERVENE

Complainants, through counsel, have filed a Motion for Leave to Intervene in this matter pursuant to Colorado Civil Rights Commission Rule 10.9(A)(2), 3 CCR 708-1. The motion was served on all parties via mail on June 27, 2013. No response to the motion has been filed with the Office of Administrative Courts. Pursuant to Rule 10.9(A)(2), a complainant may intervene at the discretion of the Administrative Law Judge either in person or by counsel. Based on a review of the motion and the case file in this matter, it is hereby ordered that,

The Complainants' Motion for Leave to Intervene is granted. Complainants' private counsel shall be permitted to present oral testimony or other evidence and to examine and cross-examine witnesses at the hearing on the merits in this matter.

Dated this 9th day of July, 2013.

s/ Michelle A. Norcross
MICHELLE A. NORCROSS
Supervising Administrative Law Judge

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STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17th Street, Suite 1300 Denver, Colorado 80202	**RECEIVED** **SEP 09 2013** ***OFFICE OF THE ATTORNEY GENERAL***
CHARLIE CRAIG AND DAVID MULLINS, **Complainants,** vs. **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents.	▲**COURT USE ONLY**▲
Attorney for Respondent: Nicolle H. Martin, No. 28737 7175 W. Jefferson Avenue, Suite 4000 Lakewood, Colorado 80235 303.332.4547 nicolle@centurylink.net	Case Number: **2013-0008**

RESPONDENT'S AMENDED RESPONSES TO COUNSEL IN SUPPORT OF THE COMPLAINT'S FIRST SET OF REQUESTS FOR ADMISSION TO RESPONDENTS

Respondent Masterpiece Cakeshop, Inc., by and through counsel, Nicolle H. Martin, hereby amends its responses to the requests for admission propounded by Counsel in Support of the Complaint and states as follows:

1. Admit that Masterpiece Cakeshop is a business that operates in Lakewood, Colorado.

Response: Admit.

2. Admit that Masterpiece Cakeshop sells cakes, including wedding cakes, and special occasion cakes, as well as other baked goods to the public.

Response: Respondent admits that it sells cakes, including wedding cakes, and other baked goods. Respondent does not know what Counsel in Support of the Complaint means by the terms "special occasion cakes," and as such, deny that portion of the request for admission.

3. Admit that Masterpiece Cakeshop is a place of business that engages in the sale of bakery goods to the public.

Response: Admit.

4. Admit that Masterpiece Cakeshop is owned and operated by Jack Phillips.

Response: Admit.

5. Admit that it is the policy at Masterpiece Cakeshop that it will not sell wedding cakes for any same-sex marriage celebration or reception.

Response: Respondent admits only that it does not create wedding cakes for same-sex marriage celebrations or receptions.

6. Admit that Charlie Craig, David Mullins, and Craig's mother, Deborah Munn, visited Masterpiece Cakeshop on or about July 19, 2012.

Response: Respondent admits that on or about July 19, 2012, two young men who identified themselves as Charlie and David and an older woman visited Respondent's bakery. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

7. Admit that Jack Phillips waited on Charlie Craig, David Mullins, and Deborah Munn on or about July 19, 2012.

Response: Respondent admits that on or about July 19, 2012, it waited on two young men who identified themselves as Charlie and David. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

8. Admit that Craig and Mullins told Phillips that they wanted to purchase a wedding cake for their wedding or wedding reception.

Response: Respondent admits that two young men who identified themselves as Charlie and David came into its bakery on or about July 19, 2012 and stated that they needed a cake for their wedding. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

9. Admit that Phillips told Craig and Mullins that he does not sell wedding cakes for same-sex weddings.

Response: Respondent admits only that Jack Phillips told the two young men who identified themselves as Charlie and David that he does not create wedding cakes for same-sex weddings. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

10. Admit that Phillips told Munn that he would not sell Craig and Mullins a cake for their same-sex wedding because of his religious beliefs.

Response: Respondent admits that Phillips told a woman who represented herself as the mother of one of the Complainants that he would not create a cake for a same-sex wedding because of his religious

beliefs. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

11. Admit that Phillips told Craig and Mullins that he would sell them birthday cakes, shower cakes, or other kind of cakes.

Response: Respondent admits only that Jack Phillips told one of the young men who requested a wedding cake on or about July 19, 2012 that he would sell them birthday cakes, shower cakes, or cookies or brownies. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

12. Admit that Munn called Phillips the next day and asked why he refused to sell a cake to Craig and Mullins.

Response: Respondent admits that a woman who represented herself as the mother of one of the Complainants telephoned Mr. Phillips on or about July 20, 2012 and inquired as to whether Jack Phillips refused to create a wedding cake for her son because of his religious beliefs. Respondent has made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

13. Admit that Phillips stated that he refused to sell wedding cakes for same-sex couples because of his religious beliefs and because same-sex marriage is illegal in Colorado.

Response: Respondent admits that Phillips told a woman who represented herself as the mother of one of the Complainants that he would not create a cake for a same-sex wedding because of his religious beliefs and because Colorado law only recognizes marriage between one man and one woman. Respondent have made a reasonable inquiry and the information known or readily obtainable by Respondent is insufficient to enable Respondent to admit or deny the remainder of this request for admission.

14. Admit that on approximately five or six other occasions, other customers of Masterpiece Cakeshop have requested a wedding cake for a same-sex wedding or reception, and Phillips advised those customers that Masterpiece Cakeshop would not sell a cake for a same-sex wedding, reception, or commitment ceremony.

Response: Admit.

Respectfully submitted this 5th day of September, 2013.

Attorney for Respondent
Masterpiece Cakeshop, Inc.

/s/ Nicolle H. Martin
Nicolle H. Martin, No. 28737

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EXCERPTS FROM MEMORANDUM OF LAW IN SUPPORT OF COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT

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COMPLAINANTS' STATEMENT OF UNDISPUTED FACTS ("CSOUF")

For purposes of Complainants' Motion for Summary Judgment only, Complainants submit that the following facts are undisputed:

1. Masterpiece Cakeshop is a business that sells baked goods to the public. Exhibit H to Affidavit of Paula Greisen ("Greisen Aff.", which is attached hereto as Exhibit A), Respondents' Amended Responses to Counsel in Support of the Complaint's First Set of Requests for Admission to Respondents ("Amended RFA Responses"), ¶¶ 1, 3.

2. Jack Phillips owns and operates Masterpiece Cakeshop. *Id.* at ¶ 4.

3. Masterpiece Cakeshop sells wedding cakes to its customers. *Id.* at ¶ 2.

4. Masterpiece Cakeshop does not create wedding cakes for same-sex marriage celebrations or receptions. *Id.* at ¶ 5.

5. In the summer of 2012, Complainants Charlie Craig ("Craig") and David Mullins ("Mullins") were making plans to marry in Provincetown, Massachusetts, then return home to Colorado and celebrate their marriage at a reception in the Denver

area. Exhibit B to Greisen Aff., Complainants' complaint of discrimination submitted to the Colorado Civil Rights Division, ("CCRD Complaint"), p. 12.

6. On July 19, 2012, Complainants Craig and Mullins, together with Charlie's mother, Deborah Mumm ("Munn"), visited Masterpiece Cakeshop. Jack Phillips waited on them. Amended RFA Responses, ¶¶ 6, 7; CCRD Complaint p. 12.

7. Craig and Mullins explained to Phillips that they needed a wedding cake. Amended RFA Responses, ¶ 8; CCRD Complaint, p. 12.

8. Phillips told Craig and Mullins that he does not create wedding cakes for same-sex weddings. Amended RFA Responses, ¶ 9; CCRD Complaint, p. 12.

9. Craig and Mullins left Masterpiece Cakeshop without having an opportunity to taste wedding cake samples or to place an order for a wedding cake. CCRD Complaint, p. 12.

10. Phillips subsequently stated to Munn that he would not create a cake for a same-sex wedding because of his religious beliefs and because Colorado law only recognizes marriage between one man and one woman. Amended RFA Responses ¶¶ 10, 13; CCRD Complaint, pp. 10, 12.

11. On approximately five or six other occasions, other customers of Masterpiece Cakeshop have requested a wedding cake for a same-sex wedding or

reception, and Phillips advised those customers that Masterpiece Cakeshop would not sell a cake for a same-sex wedding, reception, or commitment ceremony. Amended RFA Responses ¶ 14; Greisen Aff., Exhibit D, Complainants' Rebuttal to Respondent Masterpiece Cakeshop, Inc.'s CCRD responses, pp. 2-4.

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EXCERPTS FROM EXHIBIT D AFFIXED TO MEMORANDUM OF LAW IN SUPPORT OF COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT

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AFFIDAVIT OF STEPHANIE SCHMALZ

I, Stephanie Ricker Schmalz, hereby affirm under penalty of perjury that the following statements are true:

1. I am a resident of Littleton, Colorado.

2. I have been in a committed relationship with another woman, Jeanine Schmalz, since 2005. We are raising three children together.

3. After several years together, Jeanine and I decided to hold a Family Commitment Ceremony. We invited friends and family from several states to celebrate with us at a gathering in Littleton.

4. We decided to serve cupcakes at our Family Commitment Ceremony. On January 16, 2012, Jeanine and I visited Masterpiece Cakeshop's retail location in Denver for the purpose of tasting and potentially ordering cupcakes for our event.

5. At the Cakeshop, we met with a female representative and discussed with her our interest in placing a large cupcake order. This woman explained our options in terms of flavors, delivery, rental of various stands or displays, pricing, and so forth.

6. After we had spoken with her for several minutes, the woman said, "Wait, who is this for? Is it for the two of you?" Jeanine and I confirmed that yes, the celebration would be for the two of us. At that point, the woman said that she would not be able to take our order because of Cakeshop policy. She said this was because the Cakeshop owners believed in the Bible and that same-sex marriage was not legal in the state of Colorado.

7. We left Masterpiece Cakeshop without being able to place a cupcake order.

8. Reflecting on what had happened, I wondered if the woman we met with had the authority to speak for the business and if the discriminatory policy she stated was really the policy of Masterpiece Cakeshop. Later that same day, I called the Cakeshop to ask about this. The same woman we had spoken with before answered the phone and said that she was one of the Cakeshop owners.

9. On the phone, the woman said that the Cakeshop's policy that resulted in their being unable to take our order was based on the owners' reading of the word of God. I told her that the God I know loves me and my family and instructed all people to love one another.

10. I was very sad and shocked that Masterpiece Cakeshop refused our business. I felt that Jeanine and I had been discriminated against because we are lesbians.

11. Shortly after this incident took place, I posted a review of Masterpiece Cakeshop on the website Yelp.com, in which I described my experience of discrimination there. Someone identifying himself as "Jack P. of Masterpiece Cakeshop" posted a reply to my review, in which he said that " ...a wedding [for gays and lesbians] is something that, so far, not even the State of Colorado will allow". He did not dispute that the Cakeshop has a policy of refusing to sell cakes for gay and lesbian couples' weddings and celebrations.

12. I saw press coverage in July 2012 about Charlie Craig and Dave Mullins also having been being denied service at Masterpiece Cakeshop. At that point, I decided to try an experiment. I called Masterpiece Cakeshop again and spoke with Jack Phillips. I told Mr. Phillips that I was a dog breeder and was planning to host a celebration on the occasion of breeding one of my dogs with a neighbor's dog. I specified that for the "dog wedding" I wanted a cake large enough to serve about 20 people, in the shape of a dog bone, and lettered with the names Roscoe and Buffy. Mr. Phillips stated no objection to filling this order; he quoted me a price of $69.99 plus tax and asked when I needed the cake.

13. I then felt even more disgusted that the owners of Masterpiece Cakeshop were willing to take a cake order for a supposed wedding between two dogs, but were not willing to take an order for a celebration of the love and commitment between two women.

Dated: January 3, 2013

Signed: *Stephanie Schmalz*

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AFFIDAVIT OF SAMANTHA SAGGIO

I, Samantha Saggio, hereby affirm under penalty of perjury that the following statements are true:

1. I am a resident of Westminster, Colorado.

2. I have been in a committed relationship with another woman, Shana Chavez, since August 2011.

3. Shana and I decided to hold a commitment ceremony. We held the ceremony at Christies of Genesee in Colorado on September 8, 2012.

4. On May 19, 2012, Shana and I visited Masterpiece Cakeshop's retail location in Lakewood for the purpose of exploring cake options and potentially ordering a cake our event.

5. At the Cake shop, we met with a female representative and explained to her that we were interested in learning about cake options, tasting samples, and potentially placing an order. This woman encouraged us to sit at a table in the Cake shop and showed us a book of cake pictures. She explained some of the types and sizes of cake we could buy.

6. After this conversation had gone on for few minutes, I asked Shana a question about what type of cake we would prefer, and the Cake shop representative interjected, "Wait, are you both the brides?" I replied that yes, we were.

7. At that point, the woman closed the book of cake pictures that had been open on the table in front of us and told us that Masterpiece Cake shop would not be able to provide a cake since we were doing something "illegal." Surprised, I asked her to clarify, and she said that because of store policy, she would not be taking a cake order from us.

8. We left Masterpiece Cakeshop without being able to place a cupcake order.

9. After I explained what had happened to us at Masterpiece Cakeshop, my uncle, Steve Trujillo, called the Cakeshop to ask for further clarification of their policy. According to my uncle, he spoke with the owner of the shop Jack Phillips, who said that it was the policy of the business not to sell cakes for same-sex weddings or commitment ceremonies.

10. I was upset that Masterpiece Cakeshop refused our business. The situation was incredibly awkward, and I felt that Shana and I had been discriminated against because of our sexual orientation.

Dated: January 8, 2013

Signed: *s/ Sam Saggio*

STATEMENT OF KATIE ALLEN

I, Katie Allen, hereby state under penalty of perjury that the following are true:

1. I am a resident of Denver, Colorado.

2. I have been in a committed relationship with another woman, Alison Sandlin, since 2004.

3. In 2005, Alison and I were planning to have a commitment ceremony.

4. Alison and I visited Masterpiece Cakeshop in Lakewood, Colorado on August 6, 2005, for the purpose of tasting cakes and potentially ordering a cake for our event.

5. After a brief wait, we met with a female representative of the Cakeshop. She asked Alison and me to sit down at a table, encouraged us to select some cake flavors, and served us samples of those flavors. We talked with this woman about our cake preferences and wedding plans for several minutes.

6. The woman we had been speaking with eventually asked which one of us would be the bride in the wedding we were planning. We then clarified that Katie and I were marrying each other.

7. The woman we had been speaking with then said "we can't do it then," meaning that the bakery would not sell us cake. She explained that she was one of the owners of Masterpiece Cakeshop and that company policy prevented her from selling us cake for a same-sex wedding.

8. The woman also said that she was "sorry" she would be unable to do business with us but that Masterpiece Cakeshop had established a policy of not taking cake orders for same-sex weddings because the owners believed in the word of Jesus.

9. We also spoke to Jack Phillips, another owner of the shop, and he explained that he is not willing to make a cake for the commitment ceremony for a same-sex couple just as he would not be willing to make a pedophile cake.

10. We left Masterpiece Cakeshop without being able to place a cake order.

11. I was very disappointed and heartbroken that Masterpiece Cakeshop was unwilling to serve us because we were having a same-sex commitment ceremony. I felt that Alison and I had been discriminated against on the basis of our sexual orientation.

Dated: January 8, 2013

Signed: *s/ Katie Allen*

STATEMENT OF ALISON SANDLIN

I, Alison Sandlin, hereby state under penalty of perjury that the following are true:

1. I am a resident of Denver, Colorado.

2. I have been in a committed relationship with another woman, Katie Allen, since 2004.

3. In 2005, Katie and I were planning to have a commitment ceremony.

4. Katie and I visited Masterpiece Cakeshop in Lakewood, Colorado on August 6, 2005, for the purpose of tasting cakes and potentially ordering a wedding cake.

5. After a brief wait, we met with a female representative of the Cakeshop. She asked Katie and me to sit down at a table, encouraged us to select some cake flavors, and served us samples of those flavors. We talked with this woman about our cake preferences and wedding plans for several minutes.

6. The woman we had been speaking with eventually asked which one of us would be the bride in the wedding we were planning. I told her we both would. The woman then asked if we were having two separate ceremonies, and I clarified that Katie and I were marrying each other.

7. The woman we had been speaking with then said "we can't do it then," meaning that the bakery would not sell us cake. She explained that she was one of the owners of Masterpiece Cakeshop and that

company policy prevented her from selling us cake for a same-sex wedding.

8. The woman also said that she was "sorry" she would be unable to do business with us but that Masterpiece Cakeshop had established a policy of not taking cake orders for same-sex weddings because the owners believed in the word of Jesus.

9. I was very disappointed and heartbroken that Masterpiece Cakeshop was unwilling to serve us because we were having a same-sex commitment ceremony. I felt that Katie and I had been discriminated against on the basis of our sexual orientation.

10. I asked the woman we had been speaking with if there was someone else I could talk to about the shop's discriminatory policy. She pointed out Jack Phillips and identified him as another owner of Masterpiece Cakeshop.

11. Mr. Phillips told us that Masterpiece Cakeshop would not provide cake for a same-sex wedding because such weddings were "illegal" in Colorado. He went on to say that his business also would not provide cakes for pedophiles.

12. We left Masterpiece Cakeshop without being able to place a cake order.

Dated: January 8, 2013

Signed: *s/ Alison Sandlin*

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents.	**▲COURT USE ONLY▲** **CASE NUMBER:** **CR 2013-0008**

ORDER CONTINUING HEARING and ORDER REGARDING PENDING MOTIONS

Hearing of this matter commenced on September 26, 2013 at the Office of Administrative Courts before Administrative Law Judge (ALJ) Robert Spencer. Present were Stacy L. Worthington, Senior Assistant Attorney General and Counsel in Support of the Complaint; Respondents' counsel Nicole H. Martin, Esq. and Natalie L. Decker, Esq.; and Complainants' counsel Paula Greisen, Esq. and Dana Menzel, Esq. of King & Greisen, LLC and Sarah Rich, Esq. of the American Civil Liberties Union Foundation of Colorado. Respondent Jack C. Phillips was also present.

Case Summary

Complainants, a gay couple, allege that on July 19, 2012, Jack C. Phillips, owner of Masterpiece Cakeshop, Inc., refused to sell them a wedding cake because of their sexual orientation. Phillips allegedly refused Complainants' request based upon his religious beliefs against same-sex marriage. In September 2012, each Complainant filed a Charge of Discrimination with the Colorado Civil Rights Division alleging discrimination in a place of public accommodation, in violation of §§ 24-34-601 to 605, C.R.S. On March 5, 2013, the Division issued Letters of Determination (LOO) finding probable cause to believe that discrimination had occurred, as alleged. On May 31, 2013, after unsuccessful efforts to resolve the charge, Counsel in Support of the Complaint served Formal Complaints of discrimination upon Phillips and Masterpiece Cakeshop. The two complaints were then consolidated under a single case number with hearing initially scheduled for September 23, 2013.

On June 25, 2013, Respondents filed an unopposed motion to commence the hearing on September 26, 2013 rather than September 23rd, and then continue the hearing to provide additional time for discovery and for briefing anticipated dispositive motions. On June 27, 2013, Complainants filed permission to intervene. Both motions were granted.

Prior to the hearing, the parties filed a variety of additional motions, specifically:

1) On July 19, 2013, Respondents filed a motion to dismiss the complaint due lack of jurisdiction and failure to state a claim. Respondents contend that the Division's LODs were fatally flawed in that they erroneously cited the employment discrimination statute, rather than the discrimination in public accommodation statute, as the law that was violated.

2) On July 22, 2013, Phillips filed a motion to dismiss the Formal Complaint against him due to lack of jurisdiction and failure to state a claim upon which relief may be granted. Phillips contends that because he was not named as a Respondent by the Complainants in their Charges of Discrimination, it was improper to join him as a Respondent in the Formal Complaint.

3) On September 4, 2013, Respondents filed a motion to compel discovery. Respondents contend that, in light of the orders continuing the hearing and permitting intervention by Complainants, they should be permitted to pursue discovery even though the initial discovery deadline has expired.

4) On September 19, 2013, Complainants filed a request for protective order to limit the scope of Respondents' discovery.

5) On September 20, 2013, Complainants filed a motion for summary judgment.

The hearing commenced on September 26, 2013. The ALJ ruled upon the motions that were ripe for

decision, and set deadlines for responses to the rest. The hearing was then adjourned until **December 4, 2013** at 9:00 a.m. This order confirms the rulings made and procedural deadlines established at the hearing.

Motions and Procedural Deadlines

Motion to Dismiss Formal Complaint

Respondents move pursuant to C.R.C.P. 12(b) to dismiss the Formal Complaint for want of jurisdiction and failure to state a claim upon which relief can be granted. Respondents point out that § 24-34-306(2)(b)(II), C.R.S. requires the Division, upon issuing a finding of probable cause, to "stat[e] with specificity the legal authority and jurisdiction of the commission and the matters of fact and law asserted." Respondents contend that the Division failed to meet this requirement because the LODs erroneously state that "Respondent has violated C.R.S. 24-34-402, as re-enacted." Section 24-34-402 pertains to discriminatory employment practices, not discrimination in public accommodation. There is no dispute that this case does not involve either an allegation or evidence of discriminatory employment practices. The correct citation should have been to § 24-34-601, C.R.S., which prohibits discrimination in places of public accommodation. Respondents contend that because the LODs cite incorrect law, the case should be dismissed.

Counsel in Support of the Complaint opposes the motion. Counsel argues that the incorrect citation was a typographical error which did not mislead

Respondents, and cannot justify dismissal of the Formal Complaint which cites the correct statute.

The ALJ agrees that citation of the wrong statute within the LOD does not justify dismissal of the Formal Complaint. The body of the LOD clearly states a finding of discrimination in public accommodation and, under the circumstances, citing the wrong statute could not have misled Respondents about the legal basis for the Division's finding.

In their Charge of Discrimination, each Complainant correctly cites the public accommodation statute: "I believe I was unlawfully discriminated against because: of my sexual orientation in violation of Title 24, Article 34, Part 6 (Discrimination in Places of Public Accommodation) of the Colorado Revised Statutes (C.R.S.)." Complainants then summarize the facts which form the basis of their complaints. The first page of each LOD also cites the correct statute, finding that Respondent is a "place of public accommodation within the meaning of C.R.S. 24-34-601(1)." Thereafter, each LOD describes findings which can only be understood as pertinent to a claim of discrimination in public accommodation, and not employment discrimination. The final page of the LOD is titled "Discriminatory Denial of Full and Equal Enjoyment of Services – Sexual Orientation (gay)," and recites the elements necessary to prove a public accommodation discrimination claim. In light of all this information, the Division's erroneous citation to § 24-34-402 in the penultimate paragraph of the LOD could not possibly have misled Respondents about the true nature or legal basis of

this case. Technical errors in pleadings which do not mislead and cause no prejudice to the opposing party are not grounds for dismissal. *Blea v. Colo. Bd. of Parole*, 779 P.2d 1353, 1355 (Colo.1989); *Rich v. Collins*, 12 Colo. App. 511, 56 P. 207 (1899).

Furthermore, as Counsel for the Complaint argues, the LOD is not a document that determines the rights of the parties. Its purpose is to put the parties on notice that, in the Division's opinion, unlawful discrimination occurred, and to direct the parties to participate in compulsory mediation. Section 24-34-306(2)(b)(II), C.R.S. Only if the matter cannot be resolved through mediation does the matter proceed to formal complaint requiring Respondents to answer the charges at a formal hearing. Because the Formal Complaint, and not the LOD, is the formal charging document. a scrivener's error in the LOD which has not misled Respondents and is corrected in the Formal Complaint is of no legal consequence.

The motion to dismiss the Formal Complaint is therefore denied.

Motion to Dismiss Phillips

Respondent Phillips also moves to be dismissed pursuant to C.R.C.P. 12(b) for want of jurisdiction and failure to state a claim against him. Although Complainants identified Mr. Phillips as the owner of the Masterpiece Cakeshop in a Division intake questionnaire, and identified the owner as the person who had discriminated against them in their Charge of Discrimination, they did not specifically identify Mr. Phillips as a "respondent." Mr. Phillips argues

that because no complaint of discrimination was filed against him within 60 days of the alleged discrimination, as required by § 24-34-604, C.R.S., it is too late to do so now and he should be dismissed from the Formal Complaint.

The ALJ does not agree. Although Mr. Phillips was not formally named as a respondent in the Charge of Discrimination, there is no dispute that he is the cakeshop owner who Complainants alleged discriminated against them. When given notice of the Charge of Discrimination, Phillips responded to the Division admitting his interactions with Complainants and explaining his rationale for declining to sell them a wedding cake. Respondent was therefore clearly on notice of the discrimination charge against Masterpiece Cakeshop, and against him as its owner and the person with whom Complainants dealt.

The situation here is analogous to the procedure in district court that allows, under certain circumstances, an amendment adding a party that relates back to the filing of the original complaint. Per C.R.C.P. 15(c), such amendments are permitted where the same conduct is at issue in both the original and amended complaint, and the party to be added received notice of the action within the time originally allowed for filing the action, and knew or should have known he was the proper party. If those conditions are met, an amendment to change (or add) a party will relate back to the filing of the original complaint. *Lavarato v. Branney*, 210 P.3d 485, 489 (Colo. App. 2009) ("Relation back is generally permitted in order to correct a misnomer where the proper party is

already before the court and the effect is to merely correct the name under which the party is sued"); *Dillingham v. Greeley Publishing Co.*, 701 P.2d 27 (Colo. 1985) (amendment changing the defendant to a successor corporation relates back where the successor corporation had notice of the complaint one day after the statute of limitations had run.)

Applying the framework of Rule 15(c) to the present case, the ALJ concludes that adding Phillips as a respondent to the Formal Complaint is permissible even though the 60-day statute of limitations had run. The conduct alleged in both the Charge of Discrimination and the Formal Complaint is the same, and Mr. Phillips was well aware from the beginning that he is the person whose conduct is at issue. Further, because Mr. Phillips is also the owner of the originally name respondent, Masterpiece Cakeshop, he should have known that, but for Complainants' oversight, he would have been specifically identified as a respondent in the Charge of Discrimination. Under these circumstances, there is no prejudice to Mr. Phillips by allowing his identification as a respondent to relate back to the date the Charge of Discrimination was filed.

Wherefore, the motion to dismiss Mr. Phillips is denied.

Motion for Discovery

Shortly after the Division filed its Formal Complaint, an ALJ entered a procedural order establishing, among other things, a discovery completion deadline of August 14, 2013. However, the

order granting the unopposed motion to commence and continue the hearing stated that, at the hearing, "the ALJ will address any pending procedural issues that the parties may wish to raise, *and reschedule any procedural deadlines* as may be necessary." Emphasis added. Likewise, the parties' Joint Discovery Plan recognized that adjustment of the discovery deadlines might be necessary not only if the hearing was continued, but also if Complainants were allowed to intervene.

On August 30, 2013, after the initial discovery deadline had expired but before a new deadline was established, Respondents served Complainants with written discovery requests. Complainants' counsel declined to respond to the discovery requests, citing the expiration of the August 14th discovery deadline. Complainants did, however, agree to the depositions of Complainants and one other witness, limited to two hours each. On September 10, 2013, Respondents filed a motion to compel Complainants to respond to their written discovery requests. Complainants oppose the motion due to expiration of the discovery deadline.

The ALJ grants Respondents' motion to extend the discovery deadline. Respondents could reasonably have anticipated, based upon the wording of the ALJ's commence and continue order and the Joint Discovery Plan, that the discovery deadlines would be adjusted. The ALJ, therefore, is loath to penalize Respondents for failing to meet the original August 14th deadline. Furthermore, the ALJ finds no prejudice to Complainants or to Counsel in Support of the

Complaint by extending the deadline to accommodate Respondents' August 30th discovery requests.

In light of Complainants' motion for protective order, discussed below, the ALJ will defer establishing a deadline for Complainants to answer Respondents' discovery until the motion for protective order is decided. However, the parties should anticipate that the discovery response deadline will be expedited, given that the discovery request has been pending for over a month.

Motion for Protective Order

Complainants have filed a motion for protective order pursuant to C.R.C.P. 26(c), contending that many of Respondents' interrogatories and requests for production seek information that is not relevant to the claim or defense of any party, and therefore not permissible discovery under C.R.C.P. 26(b)(1). Though not specifically addressed in Complainants' motion, the parties recognize that the outcome of the motion will also affect the scope of the pending depositions.

Respondents will file and serve their response to the motion for protective order no later than **October 4, 2013**. When ruling upon the motion, the ALJ will also establish an expeditious deadline for Complainants to serve responses to whatever portion of the written discovery is permitted. The scope of the pending depositions should be consistent with the scope of the protective order.

Motion for Summary Judgment

On September 20, 2013, Complainants filed a motion for summary judgment, which has subsequently been joined by Counsel for the Complaint.

Respondents will serve and file their response by **October 31, 2013**.

Other Dispositive Motions and Deadlines

The deadline for filing additional dispositive motions is **October 31, 2013**. Responses to such motions are due **November 12, 2013**.

Pursuant to Office of Administrative Courts Rule 13, the parties shall file prehearing statements 20 days prior to the hearing.

The parties may serve documents upon each other by any mutually agreeable method, including e-mail. Documents filed with the Office of Administrative Courts may be mailed, hand-delivered or faxed if ten pages or less. Documents subject to a deadline must be received by the deadline. Additional time for mailing is not permitted.

N.B. As of November 8, 2013, the Office of Administrative Courts will be relocating to 1525 Sherman Street, 5th Floor, Denver, CO 80203. The hearing will be held at that location, and any pleading filed on or after that date should be directed to the Office of Administrative Courts' new address.

Done and Signed
October 2, 2013

s/ Robert N. Spencer
ROBERT N. SPENCER
Administrative Law Judge

* * * *

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS,** Respondents.	▲**COURT USE ONLY**▲ **CASE NUMBER:** **CR 2013-0008**

ORDER GRANTING COMPLAINANTS' MOTION FOR PROTECTIVE ORDER

Complainants have filed a motion for protective order pursuant to C.R.C.P. 26(c), contending that many of Respondents' interrogatories and requests for production seek information that is not relevant to the claim or defense of any party, and therefore not permissible discovery under C.R.C.P. 26(b)(1). Respondents oppose the motion, and contend that their discovery requests are proper and should be allowed.

Case Summary

Complainants, a gay couple, allege that on July 19, 2012, Jack C. Phillips, owner of Masterpiece Cakeshop, Inc., refused to sell them a wedding cake because of their sexual orientation. Phillips allegedly refused Complainants' request based upon his religious beliefs against same-sex marriage. Complainants filed charges of discrimination with the Colorado Civil Rights Division, which in tum found probable cause to credit the allegations of discrimination. On May 31, 2013, Counsel in Support of the Complaint filed a Formal Complaint alleging that Respondents had discriminated against Complainants in a place of public accommodation, in violation of § 24-34-601(2), C.R.S.

On August 30, 2013, Respondents served Complainants with 22 interrogatories and 16 requests for production. Complainants initially declined to respond to the requests on the grounds that they were untimely, and Respondents filed a motion to compel discovery. Complainants opposed the motion to compel, but also filed a motion for protective order in the event the motion to compel was granted. At a hearing on September 26, 2013, the ALJ granted Respondents' motion to compel, and allowed Respondents until October 4, 2013 to respond to the motion for protective order.

In support of their motion for protective order, Complainants contend that many of Respondents' discovery requests seek personal information that is not relevant to the claim or defense of any party, and therefore should be stricken. Respondents counter

that the information they seek is relevant to their defenses and is not unduly personal given that Complainants have themselves publicized their allegations of discrimination.

For the reasons explained below, the ALJ concludes that the interrogatories and requests for production to which Complainants object are not relevant to a claim or defense of any party, and are not reasonable in light of the needs of the case. Therefore, the motion for protective order is granted.

Discussion

Complainants specifically object to the following interrogatories and requests for production on the grounds that they seek "personal, intimate information" that is of no relevance to the case:

Interrogatory 3: Identify every person with whom you have discussed or attempted to discuss this case or the matters alleged in the Complaint and/or the Charge, including but not limited to any media contacts; detail the name, address, and employment status of each such person; describe the substance of the discussion(s); identify the date(s) on which the discussion(s) occurred, the location/venue the discussion(s) occurred, and who was present.

Interrogatory 5: State when and under what circumstances you met David Mullins and the status of your relationship with him in July 2012.

Interrogatory 7: State whether you corresponded or otherwise engaged in any

communications with representatives from any organization or with any individual regarding a possible claim against Masterpiece Cakeshop, Inc. before filing your initial Charge. If so, describe in detail the nature and substance of that communication; identify the name, title, address, and telephone number for that representative or individual; the date(s) on which the correspondence or communication took place; and the individual who initiated the communication.

Interrogatory 8: Identify all vendors, event planners, businesses and individuals that you hired or consulted with in connection with your wedding reception with David Mullins. For each vendor, business or individual, please provide the date(s) you communicated with them, why you did or did not select them, the date you hired them, the purpose for which you hired them and the estimated cost of the good or service provided.

Interrogatory 9: State whether anyone (including you) engaged in any oral presentations or made any formal comments or speeches at your wedding reception for your wedding with David Mullins. If so, identify the individuals who made such presentations, comments or speeches. Additionally, describe in detail the substance of these presentations and/or comments.

Interrogatory 10: State whether anyone recorded any audio and/or video at your wedding reception for your wedding with David Mullins. If so, identify the nature of each recording and the individuals who operated the recording devices. Also,

identify the individual(s) who currently possess the original recordings.

Interrogatory 17: Please identify any ownership interest that you have had or currently have in any business whatsoever.

Interrogatory 20: State whether anyone took photographs at your wedding reception for your wedding with David Mullins. If so, please identify the individual(s) who took photographs. Also, identify the individual(s) who currently possess these photographs.

Request for Production 4: All documents that reference or relate to your marriage license or application for marriage license with your co-Complainant, David Mullins, or any else, including a copy of each and every marriage license that you have applied for and/or secured in your lifetime and the applications for each such license.

Request for Production 6: All documents that concern, mention, discuss, refer to, or relate to any reception you and your co-Complainant held on your wedding day or subsequent to your wedding day, including but not limited to invitations to the reception, programs from the reception, materials distributed at the reception, signs or banners displayed at the reception, the text of any oral presentations or comments (such as toasts or speeches) given at the reception, audio or video recordings of the reception, and photographs taken at the reception.

Request for Production 11: All documents that concern or relate to any discrimination claim(s) you have filed against any other person in Colorado or any other state or country.

Request for Production 14: Copies of any diaries you or your representatives maintained or currently maintain regarding in any way the incident.

Request for Production 15: [withdrawn by Respondents]

The Legitimate Scope of Discovery

Prior to its amendment in 2002, C.R.C.P. 26(b)(1) provided for discovery of any unprivileged matter that was "relevant to *the subject matter* involved in the pending action." Emphasis added. The scope of discovery under this rule was very broad. *Kerwin v. District Court*, 649 P .2d 1086 (Colo. 1982).

However, in 2002, following similar amendments to the federal rules, the Colorado Supreme Court adopted an amendment to C.R.C.P. 26(b)(1) that restricted the scope of discovery to unprivileged matter that is "relevant to the claim or defense of any party." Broader discovery into matters relevant to the "subject matter" of the action is now permitted only by order of the trial judge upon a showing of "good cause." *Id.* According to at least one commentator, the

purpose of this change was to rein in the abusive discovery techniques prevalent under the old rule.[1]

In the recent case of *In Re: DCP Midstream v. Andarko*, the Colorado Supreme Court confirmed that the change to C.R.C.P. 26(b)(1) was intended to narrow the scope of discovery, and that the rule requires "active judicial management when a party objects that the discovery sought exceeds that scope." 2013 CO 36, ¶ 6. In ruling upon such an objection, "the trial court must determine the appropriate scope of discovery in light of the reasonable needs of the case and tailor discovery to those needs." *Id.*, ¶ 8. In tailoring the needs of discovery to the specific case, the trial court should consider the cost-benefit and proportionality factors listed in C.R.C.P. 26(b)(2)(F). Id. Those factors include such considerations as (1) whether the discovery is unreasonably cumulative or duplicative or is more readily available from another source; (2) whether the party seeking discovery has had other opportunities to obtain the information sought; (3) whether the burden or expense of the proposed discovery outweighs the likely benefit, "taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues;" and (4) whether because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable. C.R.C.P. 26(b)(2)(F). In balancing these factors, the

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[1] Richard P. Holme, *Civil Rules 16 and 26: Pretrial Procedure And Discovery Revisited and Revised*, 30 The Colorado Lawyer 9 (Dec. 2001)

trial court has discretion to consider any or all of the factors listed, or any other pertinent factors, as the needs of the case require. 2013 CO 36, ¶ 9.

Applying the requirements of Rule 26(b)(1) and the guidance of *DCP Midstream*, the ALJ concludes that Respondents' discovery goes well beyond the scope of what is reasonable to meet the needs of this case. In reaching this conclusion, the ALJ has considered all the Rule 26(b)(2)(F) factors, but finds most persuasive the fact that the proposed discovery is of no importance in resolving the essential issues in this case.

The essential issues, as defined by the Formal Complaint, Respondents' response to Complainants requests for admission, and Respondents' response to the motion for protective order, are these:

(1) The Formal Complaint alleges that on July 19, 2012, Complainants went to Masterpiece Cakeshop to order a wedding cake. While there, Complainants spoke with Phillips, who is an owner of the cakeshop. Upon learning that the cake was to be for Complainants' wedding. Phillips refused to supply the cake because of his objection to same-sex weddings. The Formal Complaint alleges that these facts amount to discrimination in a place of public accommodation on the basis of sexual orientation, in violation of § 24-34-601(2), C.R.S.

(2) In response to Complainants' requests for admission, Respondents admit the essential factual allegations. They admit that Masterpiece Cakeshop is a place of business that sells bakery goods to the

public, that the cakeshop is owned by Phillips, that on July 19, 2012 two young men identifying themselves as Charlie and David entered the cakeshop and stated that they needed a cake for their wedding, and that Phillips told Charlie and David that he does not sell wedding cakes for same-sex marriages.

(3) In response to the motion for protective order, Respondents still do not deny the essential facts, but deny that Phillips' refusal to provide a wedding cake was due to Complainants' *sexual orientation*. Rather, Phillips was motivated by his religious beliefs about same-sex marriage.

(4) Alternatively, Respondents argue that even if Phillips is found to have discriminated against Complainants due to their sexual orientation, his was within his constitutional rights to do so.

In their response to the motion. Respondents claim that "the facts and circumstances leading up to and surrounding the incident alleged by Complainants are highly relevant;" and that Complainants' "motives and biases are also relevant, any prior inconsistent statements made to any person, and other such topics are absolutely relevant in this case." Respondents, however, fail to offer any convincing explanation as to why these matters are relevant in light of the undisputed facts and Respondents' statement of their legal defenses. As framed, the outcome of this case is not dependent upon any dispute of the essential historical facts, but rather upon whether those facts amount to discrimination due to sexual orientation, and if so whether Phillips' conduct is constitutionally protected. Inquiry into Respondents' wedding plans,

the events of their wedding and reception, their conversations with anyone other than Phillips or other agents of Masterpiece Cakeshop, and their motivations or biases have absolutely no bearing on any of these essential issues. The only effect of the proposed discovery is to place upon Complainants the undue burden of disclosing personal information that could not possibly affect the outcome of the case.

Respondents also argue that the discovery sought is "important when determining the proper amount of damages to award or what sanction to impose," and that if discovery is not allowed they will be prejudiced "in defending against unrealistic and exorbitant claims for damages or sanctions." The ALJ rejects these arguments. Although a plaintiff's conduct might be relevant in a civil case where an award of damages depends in some measure upon the plaintiff having "clean hands," there is no such issue in this case. The issue framed by § 24-34-601(2) is whether Respondents discriminated against Complainants because of their sexual orientation. Complainants' motives or biases, and their conduct outside of the encounter on July 19, 2012, are not relevant to that inquiry. Moreover, neither the ALJ nor the Commission has jurisdiction to award damages, or even a fine. To the contrary, the ALJ and Commission's jurisdiction is limited to the injunctive relief specified in § 24-34-306(9), and the reporting and posting measures described by § 24-34-605, C.R.S. Complainants' motives, biases, or conduct outside of the encounter of July 19, 2012 is not relevant to any of these forms of relief.

Because the requested discovery is not consistent with the reasonable needs of the case, the ALJ grants Complainants' motion for protective order. The discovery requests identified above are therefore stricken.

In their motion for protective order, Complainants object not only to the interrogatories and requests for production enumerated above, but also to the "overwhelming majority of the other discovery requests . . . [that] have absolutely no relevance to this case." Though not specifically identified in their motion, the ALJ finds that the following additional discovery requests are not consistent with the reasonable needs of the case, and will therefore be stricken:

Interrogatory 11: Identify whether your wedding ceremony or wedding reception for your wedding with David Mullins included any events, customs, rituals, or practices that you think typically occur at weddings. If so, please identify and describe all such events, customs, rituals, and practices.

Interrogatory 13: State the case number, the court or tribunal, complaint, charge or other case identification number of designation of any petition, complaint, bankruptcy proceeding, or administrative charge (other than this case) that you have filed or instituted against any person; the dates such proceedings were initiated; and the current status or final disposition of each such proceeding.

Interrogatory 18: Please describe why you wanted a wedding cake at your wedding reception with David Mullins.

Interrogatory 19: Provide the date that you legally entered into marriage with David Mullins.

Request for Production 5: All documents reflecting or referencing communications with potential wedding cake providers for your wedding day or wedding reception with your co-Complainant, David Mullins, including wedding cake consultations, tastings and responses from wedding cake providers.

Request for Production 12: All documents that relate in any way to any prior lawsuit or administrative proceeding, other than this case, of which you have been a party or witness at any time, including but not limited to any affidavits submitted by you, any transcripts of depositions given by you, any answers to interrogatories given by you, any other oral or written testimony or admissions provided by you, and any orders or judgments rendered by the court, agency, or tribunal during the course of any such proceedings.

Request for Production 16: All documents not otherwise requested above that refer or relate to the subject matter of this action, any allegations contained in the Complaint, or any allegations contained in the Charge of Discrimination.

Order

WHEREFORE, the motion for protective order is granted. Interrogatories 3, 5, 7 through 11, 13, and 17 through 20; and Requests for Production 4, 5, 6, 11, 12, 14, and 16, are stricken. Complainants shall answer the remaining interrogatories and requests for production no later than **October 17, 2013**.

Done and Signed
October 9, 2013

s/ Robert N. Spencer
ROBERT N. SPENCER
Administrative Law Judge

* * * *

EXCERPTS FROM BRIEF IN OPPOSITION TO COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF JACK PHILLIPS'S CROSS MOTION FOR SUMMARY JUDGMENT

* * * *

UNDISPUTED FACTS

1. Jack Phillips is a Christian. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 1).

2. Jack believes in Jesus Christ as his Lord and savior. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 2).

3. Jack has been a Christian for approximately thirty-five years. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 3.

4. As a follower of Jesus Christ, Jacks' main goal in life is to be obedient to Him and His teachings in all aspects of his life. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 4.

5. Jack owns and operates Masterpiece Cakeshop, Inc. (Complainants' Mem. Law Supp. Summ. J. p.2; Resp't Aff. ¶ 5).

6. Jack desires to honor God through his work at Masterpiece Cakeshop, Inc. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 7).

7. Jack believes that God instructs: "Whatever you do, in word or in deed, do all in the name of the

Lord Jesus." Col. 3:17 (NIV). (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 8).

8. Jack, and the church which he attends, believe the Bible is the inspired word of God. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶¶ 9-10).

9. Jack believes the accounts contained in the Bible are literally true and its teachings and commands are authority for him. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 11.

10. Jack believes that God created Adam and Eve, and that God's intention for marriage from the beginning of history is that it is and should be the union of one man and one woman. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 12).

11. Jack derives this belief from the first and second chapters of *Genesis* in the Bible, as well as other passages from the Bible. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 13; Ephesians 5:21-32).

12. Jack believes the Bible teaches, "[F]rom the beginning of creation, God made them male and female, for this reason, a man will leave his father and mother and be united with his wife and the two will become one flesh. So they are no longer two, but one. Therefore, what God has joined together, let not man separate." Mark 10:6-9 (NIV). (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 14).

13. Jack believes that this is a quote from Jesus Christ which shows unequivocally that, in His own words, He regards marriage as between a man and a woman. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 15).

14. Jack believes that the Bible further instructs him to "flee" or run from sinful things, and particularly those relating to sexual immorality: "Flee immorality. Every other sin that a man commits is outside the body, but the immoral man sins against his own body. Or do you not know that your body is the temple of the Holy Spirit who is in you, whom you have from God, and that you are not your own? For you have been bought with a price; therefore, glorify God in your body." Corinthians 6:18, 19 (NIV). (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 16).

15. Jack believes that in 1 Thessalonians 5:22, the Bible instructs him to "reject every kind of evil." (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶17).

16. Jack believes the Bible commands him to avoid the very appearance of doing what is displeasing to God. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 18).

17. Jack believes that if he does not, he is displeasing to God and dishonoring Him. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶¶ 19, 67).

18. Jack believes it is also very clear that the Bible commands him to flee from sin and not to participate or encourage it in any way. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶¶ 7-20).

19. Jack believes, then, that to participate in same-sex weddings by using his gifts, time and artistic talent would violate his core beliefs, the instructions of the Bible and be displeasing to God. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 21).

20. Same-sex marriage is prohibited in Colorado, by both the Colorado Constitution and Colorado statutory law. Colo. Const. art. II, § 31 ("Only a union of one man and one woman shall be valid or recognized as a marriage in this state."); Colo. Rev. Stat. § 14-2-104 (2013) ("A marriage is valid in this state if: . . . It is only between one man and one woman.").

21. Jack believes that decorating cakes is a form of art and creative expression, and he seeks to honor God through his artistic talents. In fact, the Masterpiece Cakeshop, Inc. logo which appears in the store, on business cards, and on advertising reflects this view. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶¶ 7, 28-33; Exs. 5-8).

22. On or about July 19, 2012, two men came to Masterpiece Cakeshop, Inc. (Complainants' Mem. Law Supp. Summ. J. p.2; Resp't Aff. ¶ 70; Complaint ¶9).

23. The two men and Jack sat down at the cake consulting table. (Complainants' Mem. Law Supp. Summ. J. p.2; Resp't Aff. ¶ 72; Complaint ¶ 11).

24. The men introduced themselves as "David" and "Charlie." (Complainants' Mem. Law Supp. Summ. J. p.2; Resp't Aff. ¶ 76; Complaint ¶ 9).

25. The two men said that they wanted a *wedding* cake for "*our wedding.*" (Complainants' Mem. Law Supp. Summ. J. p.2; Resp't Aff. ¶ 77; Craig Charge of Discrim.; Mullins Charge of Discrim.).

26. Jack informed the two men that he does not create *wedding* cakes for *same-sex weddings.* (Complainants' Mem. Law Supp. Summ. J. p.2; Resp't Aff. ¶ 78; Complaint ¶ 13).

27. Jack told the two men, "I'll make your birthday cakes, shower cakes, sell you cookies and brownies, I just don't make cakes for same sex weddings." (Resp't Aff. ¶ 79).

28. Charlie Craig and David Mullins each immediately got up and left the store. (Complainants' Mem. Law. Mot. Summ. J. p.2; Resp't Aff. ¶ 80; Complaint ¶ 14).

29. They did not ask any questions, ask to sample anything, or engage in any further discussion. (Resp't Aff. ¶ 81).

30. A woman identified as Deborah Munn called the next day. (Complainants' Mem. Law Supp. Summ. J. p.3; Resp't Aff. ¶ 84).

31. Jack advised Ms. Munn that he does not create *wedding* cakes for *same-sex weddings* because of his religious beliefs, and also stated that Colorado does not allow same-sex marriages. Complainants' Mem. Law Supp. Summ. J. p.3; Resp't Aff. ¶ 8).

32. As a follower of Jesus, and as a man who desires to be obedient to the teaching of the Bible, Jack believes that to create a wedding cake for an event that celebrates something that directly goes against the teachings of the Bible, would have been a *personal endorsement* and *participation* in the ceremony and relationship that they were entering into. (Complainants' Mem. Law Supp. Summ. J. p.6; Resp't Aff. ¶ 86).

33. Jack informed the two men that he would be pleased to create any other cakes or baked goods for them, or any other same-sex couples. (Resp't Aff. ¶ 87; Complaint ¶ 21).

These are the undisputed facts in this case, and they are sufficient facts for this Court to grant summary judgment in Jack's favor.

Complainants allege that it is undisputed that they were married in Massachusetts.[1]

* * * *

[1] Although Jack Phillips, as a result of the Court's protective order precluding discovery relating to any alleged legal marriage between Complainants, has not been able to verify this assertion, for this purposes of this motion, Jack Phillips accepts this assertion by the Complainants as true. . Jack Phillips contends this order precluding discovery constitutes reversible error and, unless otherwise set forth herein, Jack Phillips contends that any other "fact" alleged by Complainants as "undisputed" is, in fact and in law, in dispute.

EXHIBIT 1

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG AND DAVID MULLINS, **Complainant,** **v.** **JACK PHILLIPS AND MASTERPIECE CAKESHOP, INC.,** **Respondent.**	**▲COURT USE ONLY▲**
Attorneys for Respondent: Nicolle H. Martin, No. 28737 7175 W. Jefferson Avenue, Suite 4000 Lakewood, Colorado 80235 303.332.4547 nicolle@centurylink.net	Case Number: 2013-0008

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AFFIDAVIT OF JACK PHILLIPS

I, JACK PHILLIPS, do hereby state the following:

1. I am a Christian.

2. I believe in Jesus Christ as my Lord and savior, and I am accountable to Him.

3. I have been a Christian for approximately thirty-five years.

4. As a follower of Jesus Christ, my main goal in life is to be obedient to Him and His teachings in all aspects of my life.

5. I own and operate Masterpiece Cakeshop, Inc.

6. Masterpiece Cakeshop, Inc. opened for business in 1993.

7. I desire to honor God through my work at Masterpiece Cakeshop, Inc.

8. The Bible instructs: "Whatever you do, in word or in deed, do all in the name of the Lord Jesus." Col. 3:17 (NIV).

9. The church I belong to believes the Bible is the inspired word of God.

10. I believe the Bible is the inspired word of God.

11. I believe the accounts contained in the Bible are literally true and its teachings and commands are authority for me.

12. I believe that God created Adam and Eve, and that God's intention for marriage is that it should be the union of one man and one woman.

13. I derive this belief from the first and second chapters of *Genesis* in the Bible, as well as other passages from the Bible, including Ephesians 5:21-32 which describes marriage as a picture of Christ's relationship with the Church.

14. The Bible states"[F]rom the beginning of creation, God made them male and female, for this reason, a man will leave his father and mother and be united with his wife and the two will become one flesh. So they are no longer two,

but one. Therefore, what God has joined together, let no man separate." Mark 10:6-9 (NIV).

15. I believe this is a quote from Jesus Christ which shows unequivocally that, in His own words, *He* regards marriage as between a man and a woman, and anything else is sinful.

16. The Bible further instructs me to "flee" or run from sinful things, and particularly those relating to sexual immorality: "Flee immorality. Every other sin that a man commits is outside the body, but the immoral man sins against his own body. Or do you not know that your body is the temple of the Holy Spirit who is in you, whom you have from God, and that you are not your own? For you have been bought with a price; therefore, glorify God in your body." 1 Corinthians 6:18, 19 (NIV)

17. In 1 Thessalonians 5:22, the Bible instructs me to "reject every kind of evil," and Romans 1:32 says, "Although they know God's righteous decree that those who do such things deserve death, they not only continue to do these very things but also approve of those who practice them."

18. I believe the Bible commands me to avoid the very appearance of doing what is displeasing to God.

19. I believe that if I do not, I am displeasing to God and dishonoring Him.

20. I believe it is also very clear that Bible commands me to flee from sin and not to participate or encourage it in any way.

21. I believe, then, that to participate in same-sex weddings by using my gifts, time and talents would violate my core beliefs, the instructions of the Bible and displeasing to God.

22. I will not deliberately disobey and violate the commands of the sovereign God of the universe.

23. I am also aware same-sex marriage is prohibited under the Colorado law (C.R.S. § 14-2-104), as well as Article II, Section 31 of the Colorado Constitution.

24. Neither I nor my business would serve other weddings that are not legally recognized, nor will we create cakes that celebrate illegal activities.

25. If a client wanted a cake for a polygamous wedding, or a wedding for a reception for a man or woman waiting for their divorce to be finalized, but still actually married to other people, we would decline to design and create wedding cakes for such occasions.

26. Creating a bone-shaped cake for a celebration of a dog's "wedding" hosted by an *animal breeder*, while I personally don't think that this would be a prudent use of time or resources, is not religiously objectionable. It is a celebration that is not illegal, immoral or unbiblical that no one,

including the animals, thinks is a legitimate marriage.

27. I have worked in bakeries for nearly 40 years, and have been decorating cakes for most of that time.

28 I believe that decorating cakes is a form of art and creative expression, and the Masterpiece Cakeshop, Inc. logo which appears in the store, on business cards, and on our advertising reflects this view.

29. Our logo is an artists' paint palate with a paintbrush and whisk.

30. Exhibit 5 is a true and accurate photograph that shows my logo. This is on display on a wall inside Masterpiece Cakeshop, Inc.

31. Exhibit 6 is a true and accurate photograph of a drawing that depicts me as an artist. This is hanging behind the counter in Masterpiece Cakeshop, Inc.

32. Exhibit 7 is a true and accurate photograph that shows the sign on the outside of Masterpiece Cakeshop, Inc.

33. Exhibit 8 is a true and correct copy of a business card from Masterpiece Cakeshop, Inc.

34. I design and create the majority of wedding cakes sold by Masterpiece Cakeshop, Inc.

35. Exhibit 2 is a true and accurate collection of photographs of weddings cakes from Masterpiece Cakeshop, Inc.

36. Exhibit 3 is a true and accurate of photographs of other cakes from Masterpiece Cakeshop, Inc., which demonstrate both the artistic nature of our cakes and that they communicate a specific message.

37. In order to design and create a wedding cake, we have a consultation with the customer(s) in order to get to know their desires, their personalities, their personal preferences and learn about their wedding ceremony and celebration. This allows me to design the perfect creation for the specific couple.

38. Exhibits 9 and 10 are true and accurate photographs that show the table at Masterpiece Cakeshop, Inc. where we consult with customers and show samples of some of our cake creations.

39. Couples may select from one of our unique creations that are on display inside the store, or they may request that I design and create something entirely different

40. In order to design a cake, before it is actually created I usually sketch out the cake on paper.

41. I need to determine how to design the specific cake desired by the couple in a manner which will physically work, and which will

accommodate the number of guests and any special features desired.

42. If the couple desires a special design or shape, for the actual wedding cake or a groom's cake, I bake a sheet cake and then sculpt the desired shape or design from the sheet cake(s).

43. Couples may also place symbolic items on the top of the cake, such as a bride and groom.

44. In addition to my creativity and artistic talent, the entire process involves a great deal of resources. The process includes the time and talent spent consulting with the customer(s), designing and sketching the cake, baking the cakes, sculpting (if necessary), making the frosting and any decorations, creating the desired colors for frosting and decorations, actually creating the cake itself and decorating it, and delivering it to the location of the wedding celebration.

45. As the creator of a wedding cake, I believe that I am an important part of the wedding celebration for the couple, and my creations are a central component of the wedding. By creating a wedding cake for the couple, I am an *active* participant and I am associated with the event.

46. A wedding cake communicates that a wedding has occurred, a marriage has begun, and the couple should be celebrated.

47. In some instances I interact with people at the weddings, particularly if the wedding ceremony and celebratory reception are held at the same venue.

48. It is common for people to come to Masterpiece Cakeshop, Inc. and ask me to create a cake or other goods for them as a result of seeing one of my wedding cakes at another wedding celebration.

49. As I have already stated, as a Christian I strive to honor God in all aspects of my life, which includes my business.

50. As a follower of Jesus, I believe it is important to treat my employees honorably and have made every effort to do so since the inception of Masterpiece Cakeshop, Inc.

51. For example, the majority of the positions that I need filled are categorized in most retail bakeries as minimum wage jobs. The other bakery owners I had talked to at the time we opened were paying minimum wage to most of their counter staff - around $6 per hour at the time. I was paying $7.50 or more to start.

52 Back at the very beginning, I wanted my people to be secure in their work and satisfied with the pay, and I continue to feel that way.

53. Over the years, I've also helped employees with personal needs beyond the work day - loaning or

giving them money to help in situations when there was a need.

54. Masterpiece Cakeshop, Inc. is not open on Sundays, nor will it or its employees deliver cakes or baked goods on Sundays.

55. Masterpiece Cakeshop, Inc. is closed on Sundays in order to honor God and to allow myself and my employees to attend church.

56. Masterpiece Cakeshop, Inc. and I gladly serve people of all races, all faiths, all sexual orientations, and all walks of life, and have since the day our doors opened.

57. When the shop was opened, specific consideration was given and discussions were had in order to determine what cakes and products would be created and sold at Masterpiece Cakeshop, Inc.

58. This was done in order to ensure that God would be honored through Masterpiece Cakeshop, Inc.

59. For example, we made a decision that we would not sell any goods with alcohol in them, including coffee drinks or baked goods. This has proven to be a wise decision, since only a few years after we opened, and just a few doors away from our shop, an Alcoholics Anonymous Club opened. If our cakes were an enticement and temptation for something that most of these people (many of whom have become good friends) are trying to control in their lives, how would we be able to

love, support and help them, while at the same time promoting one of the things that has devastated many of their lives? The Bible also teaches: "Beloved, let us love one another, for love is of God and everyone that loveth is born of God and knoweth God. He that loveth not, knoweth not God, for God is love." 1 John 4:7, 8.

60. There are many other types of cakes and baked goods that I will not design or create.

61. I will not create cakes that promote anti-American or anti-family themes, a flag-burning or a cake with a hateful message (e.g., "God hates fags"), a terrorist message, a KKK celebration of an atrocity against African Americans, an atheist message such as "God is dead" or "there is no God," or even simply vulgarity or profanity on a cake.

62. While these various kinds of messages and celebrations are protected under the same Colorado Revised Statute, 24-34-601, as 'creeds' (defined as 'a set of principles or beliefs' according to the Oxford American Desk Dictionary and Thesaurus) and the Colorado and U.S. constitutions, the heart-attitude of them does not honor Christ and that is where I seek to establish my base and why I will not design or create them.

63. Additionally, I will not create or sell Halloween cakes, cookies, brownies or anything else related to this day because of my sincerely held religious beliefs.

64. I have worked in bakeries for nearly 40 years and *I am fully aware* of how lucrative these four or five weeks in late September and all of October can be. Time magazine, Business & Money section 9/26/2012, reported that, in 2012, Americans would spend an estimated '$8 Billion on Halloween candy, pumpkins and decorations'. *This includes cakes.* To turn away that kind of business can cost not only an immediate revenue loss, but can also keep a customer from returning for other products throughout the year. However, I would rather take a chance on *losing that business* than to use the talents and the business that God has given me to make a 'quick buck', making and selling products in order to *make a profit* on a day that exalts witches, demons and devils.

65. The Bible teaches, in Galatians 5:20: "The acts of the sinful nature are obvious; sexual immorality, impurity and debauchery; idolatry and *witchcraft,* hatred, jealousy, fits of rage, selfish ambition, dissensions, factions and envy; drunkenness orgies and the like."

66. Similar to the above examples and for the above reasons, I do not design and create wedding cakes for same-sex weddings.

67. I will not design and create wedding cakes for a same-sex wedding regardless of the sexual orientation of the customer. Conversely, I will design and create wedding cakes for the wedding of one man and one woman, regardless of the sexual orientation of the customer. If a gay

person asked me to design and create a wedding cake for the wedding of a man and a woman, I would happily do so. But if a straight person asked me to design and create a wedding cake for a same-sex wedding, I would not do so. Whether the customer is gay or straight is not important to me. I don't care who anybody is attracted to and don't ask. My decision on designing and creating wedding cakes has nothing to do with the sexual orientation of the customer. It has nothing to do with the sexual orientation of anyone. It has everything to do with the nature of the wedding ceremony itself, and about my religious belief about what marriage is and whether God will be pleased with me and my work.

68. For example, a woman asked us to create a simple sheet cake with a photo transfer of two men on a cake. She advised me that it was for the men's wedding. I replied that I don't make cakes for same-sex weddings. I don't know if *she* was homosexual or not, if she was ordering the cake on her own, or if she was ordering it for the two men. To me it didn't matter whether *she* was 'straight' or not. I wasn't turning *her* away, I was rejecting *the cake* for the same sex wedding. It did not matter who was ordering it. The issue was the nature of the event and that I cannot participate in such a ceremony based on my sincerely held religious beliefs.

69. I cannot, and will not, design and create wedding cakes for a same-sex wedding regardless of the amount of money offered for such cake.

70. On or about July 19, 2012, two men and a woman came to Masterpiece Cakeshop, Inc.

71. They did not have an appointment, nor do we offer appointments.

72. We sat down at the cake consulting table.

73. The woman was not at the table at any time.

74. She was elsewhere in the store during the interaction.

75. I greeted the two men and introduced myself.

76. The men introduced themselves as "David" and "Charlie."

77. The men said that they wanted a wedding cake for "our wedding."

78. I told them that I do not create wedding cakes for same-sex weddings.

79. I told them 'I'll make your birthday cakes, shower cakes, sell you cookies and brownies, I just don't make cakes for same sex weddings.'

80. Charlie Craig and David Mullins each immediately got up and left the store.

81. They did not ask any questions, ask to sample anything, or engage in any discussion.

82. David Mullins yelled something about a "homophobic" cakeshop as he left the store.

83. The entire interaction lasted about 20 seconds.

84. A woman identified as Deborah Munn called the next day.

85. I advised Ms. Munn that I do not create wedding cakes for same-sex weddings because of my religious beliefs, and also stated that Colorado does not allow same-sex marriages.

86. As a follower of Jesus, and as a man who desires to be obedient to the teaching of the Bible, I believe that to create a wedding cake for an event that celebrates something that directly goes against the teachings of the Bible, would have been a *personal endorsement* and *participation in* the ceremony and relationship that they were entering into.

87. I would be pleased to create any other cakes or baked goods for Charlie and David, or any other same-sex couples.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed this 31st day of October, 2013.

s/ Jack Phillips
Jack Phillips

EXHIBIT 2

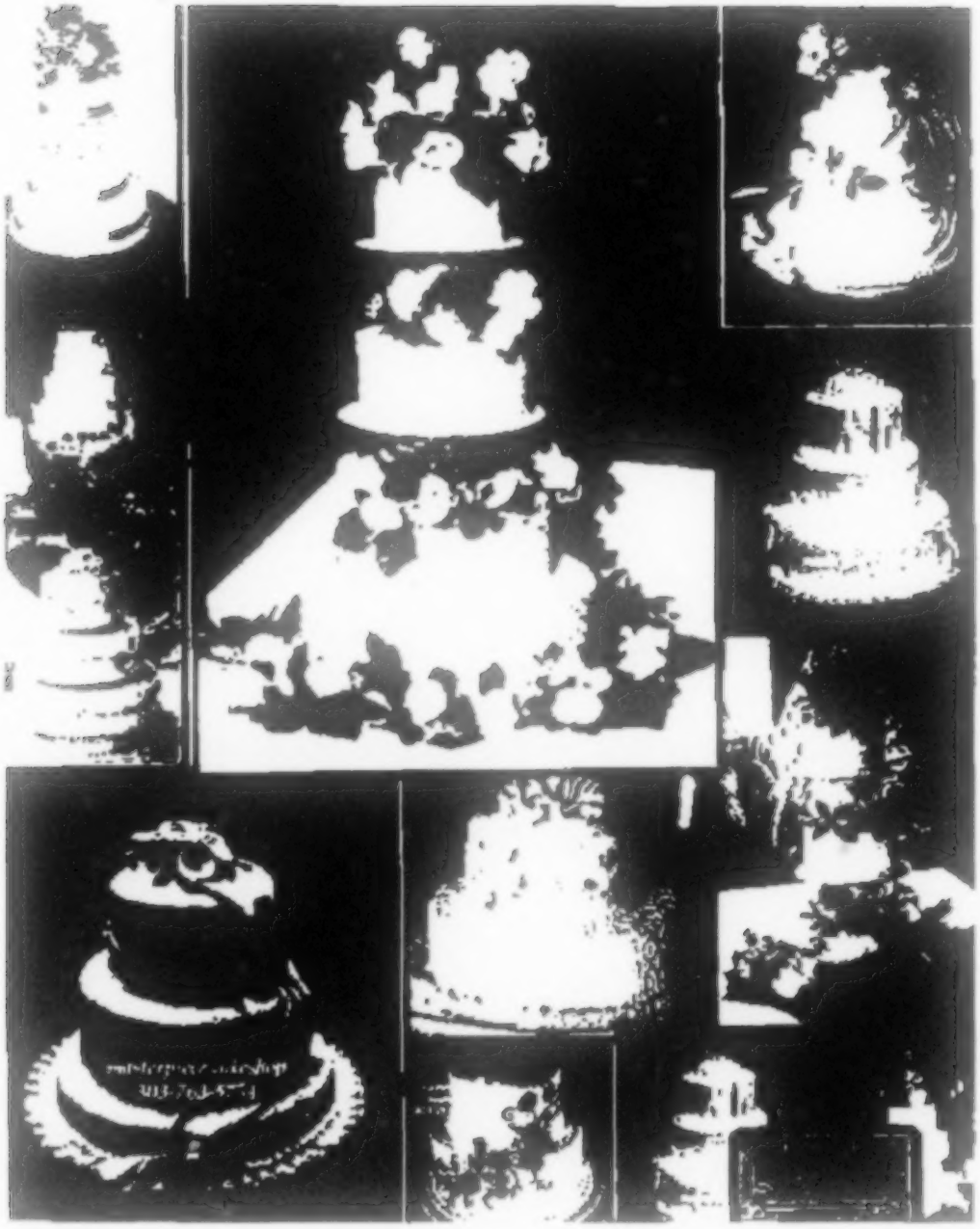


EXHIBIT 3

God Bless You, Drew!
masterpiece cakesho
Congratulations from the work o

* * * *

EXHIBIT 5

EXHIBIT 6

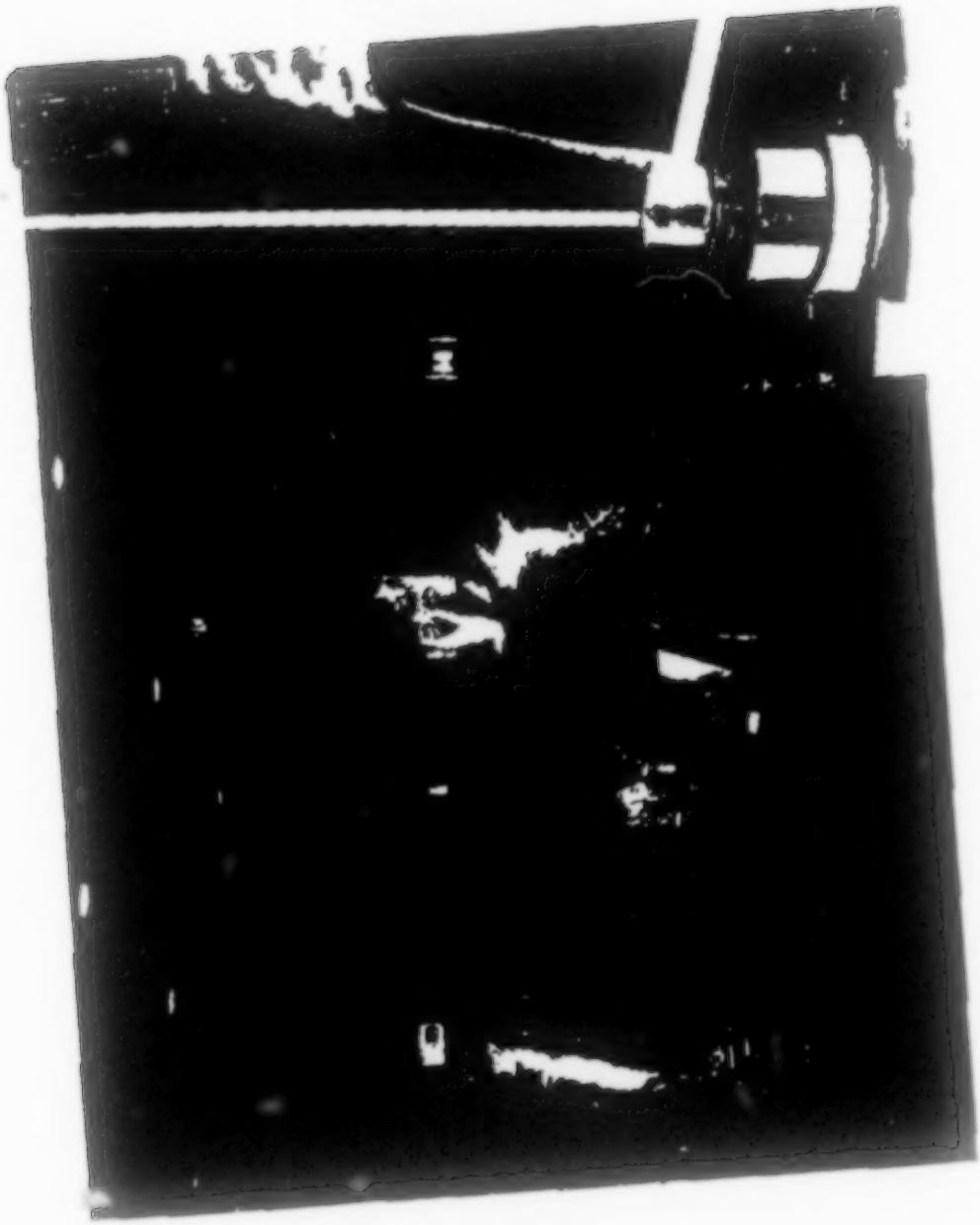
* * * *

EXHIBIT 10

* * * *

EXHIBIT 17

EXHIBIT 18



* * * *

EXHIBIT 25

STATE OF COLORADO OFFICE OF ADMINISTRATIVE COURTS 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG AND DAVID MULLINS, Complainants, v. MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS	▼COURT USE ONLY▲ Case No: 2013-0008
Attorneys for Affiant Susie Swain JEFFERSON COUNTY ATTORNEY ELLEN G. WAKEMAN, #12290 David R. Wunderlich, #39365 Assistant County Attorney Jefferson County Attorney's Office 100 Jefferson County Parkway, #5500 Golden, CO 80419-5500 Phone: 303-271 -8916 Fax: (303) 271-8901 Email: dwunderl@.co.jefferson.co.us	

AFFIDAVIT OF SUSIE SWAIN

I, affiant Susie Swain, being duly sworn, do hereby swear and affirm the following:

1. I am the Director of Recording for the Clerk and Recorder of Jefferson County, Colorado. In this role I am responsible for the processing and issuing of marriage licenses for marriages within the County of Jefferson, State of Colorado.

2. In accordance with the Colorado Constitution and Colorado State law, my office may only offer marriage licenses to opposite sex couples seeking such a license. The laws of this State do not permit the granting of a marriage license to same-sex couples. *See* Colorado Constitution Article 2 § 31; C.R.S. § 14-2-104.

3. To date, my office has never received an application for a marriage license from a same sex couple. However, if such an application were to be submitted, we would be barred from granting it under the laws cited above.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection.

Executed this 21st day of October, 2013.

s/ Susie Swain
Susie Swain
Director of Recording
Jefferson County Clerk and Recorder

The foregoing Affidavit was sworn before me this 21st day of October, 2013 by Susie Swain as Director of Recording for the Jefferson County Clerk and Recorder

s/ Elizabeth B. Clippinger
Notary's official signature

July 20, 2015
Commission expiration date

ELIZABETH B CLIPPINGER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19954018771
MY COMMISSION EXPIRES JULY 20, 2014

* * * *

EXHIBIT 29

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, Respondents.	▲**COURT USE ONLY**▲ CASE NUMBER: CR 2013 0008

COMPLAINANT'S RESPONSES TO RESPONDENTS' PATTERN AND NON-PATTERN INTERROGATORIES TO COMPLAINANT CHARLIE CRAIG

Complainant Charlie Craig, by and through his attorneys, King & Greisen and the American Civil Liberties Union, hereby submits his Responses to Respondents' Pattern and Non-Pattern Interrogatories:

Interrogatory No. 1: State the name, address, telephone number, and relationship to you of each person who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

Response to Interrogatory No. 1: Charlie Craig and David Mullins, * * *.

Interrogatory No. 2: State the name, address, and telephone number of each person likely to have knowledge relating to the facts at issue in this case and describe the nature of each person's knowledge.

Response to Interrogatory No. 2: In addition to the Complainants:

Deborah Munn, * * *. Ms. Munn has knowledge about the treatment Mr. Craig and Mr. Mullins received when they attempted to purchase a wedding cake at Masterpiece Cakeshop, and the subsequent phone conversation she had with Jack Phillips.

Stephanie Schmalz, * * *. Ms. Stephanie Schmalz has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Jeanine Schmaltz, * * *. Ms. Jeanine Schmaltz has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Samantha Saggio, * * *. Ms. Saggio has information about her treatment by the Respondents

when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Shana Chavez, * * *. Ms. Chavez has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Katie Allen, * * *. Ms. Allen has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Alison Sandlin, * * *. Ms. Sandlin has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Interrogatory No. 4: State whether you have obtained statements, reports, memoranda, affidavits, or recordings from any person that in any way concern the facts of this case or the matters alleged in the Complaint or Charge. If so, identify the authority of each such statement, report, memorandum, affidavit, or recording; the person or persons to whom the statement, report, memorandum, affidavit or recording was issued, distributed, or otherwise provided; the present location of each such statement, report, memorandum, affidavit, or recording; and the date each such statement, report, memorandum, affidavit, or recording as prepared.

Response to Interrogatory No. 4: The following Affidavits were produced to the Colorado Civil Rights Division: Affidavit of Stephanie Schmalz; Affidavit of

Samantha Saggio; Affidavit of Katie Allen; Affidavit of Alison Sandlin.

Interrogatory No. 6: State when and under what circumstances you first became aware of Masterpiece Cakeshop, Inc.

Response to Interrogatory No. 6: We selected the restaurant 240 Union for our wedding reception. Their event planner, Sheri Casey, told us they usually suggested people having receptions there use Masterpiece Cakeshop for their cakes.

Interrogatory; No. 12: State whether you have ever made any discrimination claim(s) against any other person. If so, please provide the name of that party, jurisdiction in which the claim was filed or the administrative agency that processed your claim, the basis for your claim, and the outcome of your claim.

Response to Interrogatory No. 12: No other claims have been made.

Interrogatory No. 14: Describe the factual basis for your assertion in § IV of the Charge that Masterpiece unlawfully discriminated against you because of your sexual orientation.

Response to Interrogatory No. 14: When we attempted to order a cake from Masterpiece Cakeshop for our wedding reception, Jack Philips informed us that he would not bake a cake for a same-sex ceremony, which was a denial of equal service based upon sexual orientation.

Interrogatory No. 15: State whether you have been served any goods or services at Masterpiece prior to the incident.'

Response to Interrogatory No. 15: No.

Interrogatory No. 16: Please identify each employee or former employee of Masterpiece that you, or anyone acting on your behalf, have communicated with about this case, the approximate date and the contents of such communications.

Response to Interrogatory No. 16: Prior to going to Masterpiece Cakeshop, Charlie Craig called and spoke with an unknown person in the shop and made a reservation to consult about a wedding reception cake. In addition to the response Interrogatory No. 14, Deborah Munn had a phone conversation with Jack Phillips on 7/20/12. Contents of the phone call are contained in Ms. Munn's sworn statement provided to the Civil Rights Division.

Interrogatory No. 21: State whether you procured a wedding cake for your wedding reception with David Mullins, and if so, provide the date that you selected your wedding cake; the name, address, and telephone number of the wedding cake provider; and why you selected that provider.

Response to Interrogatory No. 21: Objection, lack of relevance and beyond the scope of permissible discovery, CRCP 26(b)(1). Without waiving the preceding objection, Complainants state: We did procure a wedding cake (date unknown) from Lora's Donuts & Bakery Shop, * * *. We selected this

provider because they contacted us after hearing about our story and told us that they were personally offended by the treatment we received at Masterpiece Cakeshop. They offered to provide us with a cake for free, and we accepted that offer.

Interrogatory No. 22: Identify all persons that you anticipate calling or will call as witnesses in the hearing of this matter, and provide a summary of each person's anticipated testimony.

Response to Interrogatory No. 22:

Charlie Craig, * * *. Mr. Craig has knowledge of all aspects of his claim and will testify regarding the same.

David Mullins, * * *. Mr. Mullins has knowledge of all aspects of his claim and will testify regarding the same.

Deborah Munn, * * *. Ms. Munn is expected to testify about her interactions and communications with Respondent Jack C. Phillips.

DATED this ___ day of October, 2013.

I declare under penalty of perjury that the answers to the above interrogatories are true and complete to the best of my knowledge.

s/ Charlie Craig
Charlie Craig

As to objections:

KING & GREISEN, LLP

/s Paula Greisen
Paula Greisen
1670 York Street
Denver, CO 80206
(303) 298-9878
(303) 298-9879 (fax)
greisen@kinggreisen.com

* * * *

EXHIBIT 30

STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainants, vs. MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, Respondents.	▲COURT USE ONLY▲ CASE NUMBER: CR 2013 0008

COMPLAINANT'S RESPONSES TO RESPONDENTS' PATTERN AND NON-PATTERN INTERROGATORIES TO COMPLAINANT DAVID MULLINS

Complainant David Mullins, by and through his attorneys, King & Greisen and the American Civil Liberties Union, hereby submits his Responses to Respondents' Pattern and Non-Pattern Interrogatories:

Interrogatory No. 1: State the name, address, telephone number, and relationship to you of each person who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

Response to Interrogatory No. 1: Charlie Craig and David Mullins, * * *.

Interrogatory No. 2: State the name, address, and telephone number of each person likely to have knowledge relating to the facts at issue in this case and describe the nature of each person's knowledge.

Response to Interrogatory No. 2: In addition to the Complainants:

Deborah Munn, * * *. Ms. Munn has knowledge about the treatment Mr. Craig and Mr. Mullins received when they attempted to purchase a wedding cake at Masterpiece Cakeshop, and the subsequent phone conversation she had with Jack Phillips.

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Samantha Saggio, * * *. Ms. Saggio has information about her treatment by the Respondents

when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Shana Chavez, * * *. Ms. Chavez has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Katie Allen, * * *. Ms. Allen has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Alison Sandlin, * * *. Ms. Sandlin has information about her treatment by the Respondents when attempting to purchase a wedding cake at Masterpiece Cakeshop.

Interrogatory No. 4: State whether you have obtained statements, reports, memoranda, affidavits, or recordings from any person that in any way concern the facts of this case or the matters alleged in the Complaint or Charge. If so, identify the authority of each such statement, report, memorandum, affidavit, or recording; the person or persons to whom the statement, report, memorandum, affidavit or recording was issued, distributed, or otherwise provided; the present location of each such statement, report, memorandum, affidavit, or recording; and the date each such statement, report, memorandum, affidavit, or recording as prepared.

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Samantha Saggio; Affidavit of Katie Allen; Affidavit of Alison Sandlin.

Interrogatory No. 6: State when and under what circumstances you first became aware of Masterpiece Cakeshop, Inc.

Response to Interrogatory No. 6: We selected the restaurant 240 Union for our wedding reception. Their event planner, Sheri Casey, told us they usually suggested people having receptions there use Masterpiece Cakeshop for their cakes.

Interrogatory; No. 12: State whether you have ever made any discrimination claim(s) against any other person. If so, please provide the name of that party, jurisdiction in which the claim was filed or the administrative agency that processed your claim, the basis for your claim, and the outcome of your claim.

Response to Interrogatory No. 12: No other claims have been made.

Interrogatory No. 14: Describe the factual basis for your assertion in § IV of the Charge that Masterpiece unlawfully discriminated against you because of your sexual orientation.

Response to Interrogatory No. 14: When we attempted to order a cake from Masterpiece Cakeshop for our wedding reception, Jack Philips informed us that he would not bake a cake for a same-sex ceremony, which was a denial of equal service based upon sexual orientation.

Interrogatory No. 15: State whether you have been served any goods or services at Masterpiece prior to the incident.'

Response to Interrogatory No. 15: No.

Interrogatory No. 16: Please identify each employee or former employee of Masterpiece that you, or anyone acting on your behalf, have communicated with about this case, the approximate date and the contents of such communications.

Response to Interrogatory No. 16: Prior to going to Masterpiece Cakeshop, Charlie Craig called and spoke with an unknown person in the shop and made a reservation to consult about a wedding reception cake. In addition to the response Interrogatory No. 14, Deborah Munn had a phone conversation with Jack Phillips on 7/20/12. Contents of the phone call are contained in Ms. Munn's sworn statement provided to the Civil Rights Division.

Interrogatory No. 21: State whether you procured a wedding cake for your wedding reception with David Mullins, and if so, provide the date that you selected your wedding cake; the name, address, and telephone number of the wedding cake provider; and why you selected that provider.

Response to Interrogatory No. 21: Objection, lack of relevance and beyond the scope of permissible discovery, CRCP 26(b)(1). Without waiving the preceding objection, Complainants state: We did procure a wedding cake (date unknown) from Lora's Donuts & Bakery Shop, * * *. We selected this

provider because they contacted us after hearing about our story and told us that they were personally offended by the treatment we received at Masterpiece Cakeshop. They offered to provide us with a cake for free, and we accepted that offer.

Interrogatory No. 22: Identify all persons that you anticipate calling or will call as witnesses in the hearing of this matter, and provide a summary of each person's anticipated testimony.

Response to Interrogatory No. 22:

Charlie Craig, * * *. Mr. Craig has knowledge of all aspects of his claim and will testify regarding the same.

David Mullins, * * *. Mr. Mullins has knowledge of all aspects of his claim and will testify regarding the same.

Deborah Munn, * * *. Ms. Munn is expected to testify about her interactions and communications with Respondent Jack C. Phillips.

DATED this ___ day of October, 2013.

I declare under penalty of perjury that the answers to the above interrogatories are true and complete to the best of my knowledge.

s/ David J. Mullins
David Mullins

As to objections:

KING & GREISEN, LLP

/s Paula Greisen
Paula Greisen
1670 York Street
Denver, CO 80206
(303) 298-9878
(303) 298-9879 (fax)
greisen@kinggreisen.com

* * * *

EXCERPTS FROM COMPLAINANTS' RESPONSE IN OPPOSITION TO RESPONDENTS' CROSS-MOTION FOR SUMMARY JUDGMENT AND REPLY BRIEF IN SUPPORT OF COMPLAINANTS' MOTION FOR SUMMARY JUDGMENT

* * * *

COMPLAINANTS' RESPONSE TO RESPONDENTS' STATEMENT OF UNDISPUTED FACTS ("RESP'S SOUF")

1-21. Complainants do not dispute any of the facts stated in paragraphs 1-21 of Resp's SOUF.

22-28. Complainants do not dispute any of the facts stated in paragraphs 22-28 of Resp's SOUF, and note that these paragraphs mirror statements in Complainants' Statement of Undisputed Facts (Compl's SOUF) recounting the interactions between the parties in July 2012, illustrating that there exists no genuine issue of material fact in this case.

29. Complainants do not dispute this statement but note that Complainant Mullins exclaimed his frustration with Respondents' discriminatory decision to refuse them service before exiting the shop.

30-31. Complainants do not dispute any of the facts stated in paragraphs 30 and 31 of Resp's SOUF, and note that these paragraphs mirror statements in Complainants' Statement of Undisputed Facts (Compl's SOUF) recounting the interactions between

the parties in July 2012, illustrating that there exists no genuine issue of material fact in this case.

32. Complainants do not dispute any of the facts state in paragraph 32 of Resp's SOUF.

33. Complainants do not dispute any of the facts stated in paragraph 33 of Resp's SOUF, and note that this paragraph mirror statements in Complainants' Statement of Undisputed Facts (Compl's SOUF) recounting the interactions between the parties in July 2012, illustrating that there exists no genuine issue of material fact in this case.

* * * *

STATE OF COLORADO

CITY AND COUNTY OF DENVER

Colorado Civil Rights Commission Meeting

Held on May 30, 2014

Colorado State Capitol

200 East Colfax Avenue, Old Supreme Court Chambers

In re: CHARLIE CRAIG and DAVID MULLINS v.

MASTERPIECE CAKESHOP, INC.

Case No.: P20130008X, CR2013-0008

This transcript was taken from an audio recording by Teresa Hart, Registered Professional Reporter and Notary Public.

* * * *

* * * *

[RAP 0890-0901]

THE CHAIRWOMAN: Okay. So then the larger question at hand, well, the legal question at hand is this question of the fact that the administrative law judge granted the motion for summary judgment filed by the complainants and denied the respondent's motion for summary judgment. And we're being asked to reconsider that.

And there are a number of issues. I think there's sort of three central arguments: That the respondents did not discriminate because of sexual orientation; that forcing the respondents to provide their services to the complainants is compelled speech; and that also it -- that the administrative law judge violated the respondent's right to free exercise of religion.

Who would like to start on any of those issues?

COMMISSIONER JAIRAM: Should we take them one at a time?

THE CHAIRWOMAN: If that would -- if that pleases the commission, I'm okay with that.

UNIDENTIFIED SPEAKER: I didn't hear him.

THE CHAIRWOMAN: He said, should we take each issue one at a time?

UNIDENTIFIED SPEAKER: I think so.

UNIDENTIFIED SPEAKER: Can all the commissioners turn their microphones on?

UNIDENTIFIED SPEAKER: I think they're on.

UNIDENTIFIED SPEAKER: Thank you.

UNIDENTIFIED SPEAKER: Thank you.

COMMISSIONER JAIRAM: Okay. With respect to the issue of where the respondent claims that they were not discriminating based on sexual orientation, but based on same sex marriage, to me I think they're tied together.

Obviously, people of the same sex are wanting to get married, so discriminating against same sex marriage is the same as, you know, discriminating against their sexual orientation. I mean, that's my (inaudible).

THE CHAIRWOMAN: I see nods. Any other comments on that point?

UNIDENTIFIED SPEAKER: Yes. I agree with Commissioner Jairam. And when I thought about this issue, I thought about (inaudible) back not very many decades ago where -- to when interracial marriage was -- was frowned upon, was not recognized, was actually illegal in some states. And I think that that is the same issue as same sex marriage.

And the courts have held that interracial -- discrimination based on interracial marriage is the same as race discrimination and that they can't be separated. So based on those things, I think -- and,

you know, there have been many attempts to justify that kind of discrimination in the past. And I think it's time we recognized that it's discrimination.

UNIDENTIFIED SPEAKER: Commissioner (inaudible), I had a similar thought. The terminology used was miscegenation. And that too was the law in several places for a number of years. And it took a long time for, I think, the courts and others to come to some realization that that didn't make much sense. So I had the similar thought in reviewing this case, you know.

The line has to be drawn somewhere. And we think we've come a long way, but we've still got a long way to go in that regard. So (inaudible) on that point.

THE CHAIRWOMAN: Okay. Anyone else want -- have anything else to add? I mean, ultimately, right, we're just deciding whether we think the administrative law judge's decision should be overturned on this point, and it sounds like we don't. We think that we are in agreement with the thinking there.

UNIDENTIFIED SPEAKER: I (inaudible).

THE CHAIRWOMAN: I'm sorry, say that again?

UNIDENTIFIED SPEAKER: I said, I don't have any different --

THE CHAIRWOMAN: Great. Right, I mean, this nexus, this connection between being opposed to same sex marriage and sexual orientation is the basis that they are --

COMMISSIONER JAIRAM: Yeah, I mean, seriously, let's look at this. I mean, isn't it kind of ridiculous to think that people of the opposite sex can be considered to be having same sex marriage? And so it speaks to the issue of, what is sexual orientation?

THE CHAIRWOMAN: Uh-huh.

COMMISSIONER JAIRAM: So I think it's very clear to me, that they are one and the same.

THE CHAIRWOMAN: Right. That they are connected. Okay. With respect to this question of compelled speech, again, our ultimate decision is to determine whether the administrative law judge's opinion here should be overturned in part or in whole on the question of whether requiring the respondent to provide his services is somehow compelled speech in violation of the First Amendment of the United States, as well as the Colorado's First Amendment in the -- excuse me, free speech under the Colorado Constitution.

So I think we have to determine -- one of the arguments is that making cake is an expression. The counterargument is that this is being provided in the course of offering a business, offering services, and that the speech -- the speaker in that case is not the cake maker, but the customer. Yeah.

UNIDENTIFIED SPEAKER: I do believe that the reason that we have these laws also is because of the public accommodation. What we have here is public accommodation. And I think within -- you know, somebody within their own home and freedom of

speech, wanted to bake a cake, and wouldn't allow that, that's completely different, that's private.

But what we have here is a business. And it's public accommodation so it should be -- it should be open to everyone regardless of whether it's a same sex marriage or not.

UNIDENTIFIED SPEAKER: Well, and even if it -- if someone wanted to bake a cake on a public parking lot and not charge -- not try to sell their product as an expression of speech, that would be a different -- in my mind, a different question than -- than the question before us. And there's a -- there's a -- there's a sale of the cake and the business at hand, so . . .

UNIDENTIFIED SPEAKER: I think we've established -- I mean, we've talked about the issue that same sex marriage is cannot be separated from sexual orientation, but that same sex marriage -- that the two are tied. So it seems to me that in a public accommodation, that it is the same -- the same rules apply regarding speech within that public accommodation.

If it were a -- a person came in and said -- and the cake shop had said, No, I don't bake cakes for Hispanics, it would be the -- it would be the same issue. And it would be still they don't have the right to do that under their freedom of speech either. So we could overturn every civil rights statute if we --

THE CHAIRWOMAN: Yeah, it sort of swallows it up whole, right, if you sort of let them -- let that be the standard.

Yes, Commissioner Raju.

COMMISSIONER JAIRAM: Yeah, I think any business that chooses to -- or any person that chooses to do business in the state of Colorado has to recognize that they have to conduct business in an ethical and law-abiding way.

And if the laws of the state say that you will not discriminate, that should be very clear. I mean, it's not an issue of free speech. I mean, I can believe anything I want to believe.

But if I'm going to do business here, then I'd better not discriminate if I'm going to follow the laws of discrimination and be (inaudible). (Inaudible). And to refuse service to somebody is -- you know, it is discriminatory in my mind.

THE CHAIRWOMAN: I think it -- I think that's the gist of it, right, is this idea that -- you know, that's why the law is here, because discrimination is harmful, right? And our job is to try to eradicate that.

The purpose of the Colorado Antidiscrimination Act is to eradicate that so that people aren't being hurt and their dignity isn't harmed. The justification here seems to be, Well, you're making me say something I don't want to say, I don't know -- I don't know that that's entirely true.

I think that the cake shop owner could -- they can't say -- put up a sign that says, We refuse service, but they certainly could put up a sign that says, you know, we're opposed to, you know, same sex marriage. They

could say that. I don't know that -- and I don't know that by making a cake that someone has ordered, that they're being forced to say something that they don't agree to with (sic).

I don't think that that's what's happening. I think they're just -- they're making a cake. Yes, it's creative. But there are lots of industries or businesses that require some creativity, some artistry.

And if we -- we start drawing these lines, I think that's where we get into trouble.

UNIDENTIFIED SPEAKER: It seems to me you could make the same argument whether you were building a website, almost anything that takes some -- some imagination or maybe -- maybe not (inaudible). But other than that, almost any profession takes -- and any business takes some creativity.

THE CHAIRWOMAN: Okay. Is there any other comments anyone has?

COMMISSIONER JAIRAM: Well, it's been over, what, 60, 70 years since -- there used to be signs in restaurants saying, We refuse service to certain segments of the population. And I'm glad -- hopefully we're progressing further to the point where we stop this kind of behavior.

THE CHAIRWOMAN: All right. So on this question of the -- the argument that there's a violation of respondent's free speech rights, our thought is that the administrative law judge got it right in this?

UNIDENTIFIED SPEAKER: Yes.

COMMISSIONER JAIRAM: I think so. I mean, they don't even, you know, get to any discussions. He just refused them service, period.

THE CHAIRWOMAN: Okay. What's the next issue? I guess the last one is -- I real -- the reason that we're here in the first place, right, is that the respondents assert that the administrative law judge's decision violates their freedom to exercise their religion.

And there's a couple arguments within that, that are folded into that. One is that there should be -- the Colorado Antidiscrimination Act should be reviewed under strict scrutiny. And they're also basically saying that this is a violation, that this isn't -- that there -- because there are exceptions in our statute, that, you know, this isn't correct, this is unconstitutional. At least that's what I -- how I read it. Tell me if you're (inaudible).

COMMISSIONER RICE: I think that the Colorado Antidiscrimination Act is written in a very neutral manner. Some exceptions have been made for religious organizations or businesses or organizations that clearly serve a single sex. As noted, a women's clinic or some other organization like that.

But those are very clear -- clearly delineated exceptions. If Masterpiece Cake were -- or Mr. Phillips were an ordained minister and he was only serving commissioners or congregates of his church, that might be a different situation. But he is -- does have a public business and is he serving the public.

So I -- you know, I don't think that this case falls within the exceptions.

THE CHAIRWOMAN: Uh-huh.

COMMISSIONER RICE: I think there is a very significant and important reason for the Antidiscrimination Act and a significant -- it is a significant benefit to this state to have this statute and to enforce it.

THE CHAIRWOMAN: Thank you, Commissioner Rice. I think that's well said. And you certainly speak for me. But does anyone else have anything they want to add? Okay. So.

COMMISSIONER JAIRAM: I don't think the act necessarily prevents Mr. Phillips from believing what he wants to believe. And -- but if he decides to do business in the state, he's got to follow (inaudible). And I don't think the Act is overreaching to the extent that it prevents him from exercising his free speech.

THE CHAIRWOMAN: Well, free speech we already -- we talked about. But what do you think about his --

COMMISSIONER JAIRAM: His belief system, yes.

THE CHAIRWOMAN: Right, right, his religious beliefs.

COMMISSIONER JAIRAM: We all have our own belief systems.

THE CHAIRWOMAN: Yes.

COMMISSIONER JAIRAM: And, you know, as a businessman, I shouldn't allow my belief system to impact on how I treat people, bottom line.

THE CHAIRWOMAN: Okay. That is the bottom line, Commissioner Jairam, thank you.

Okay. So then my sense is, from what we're saying, I just want to make sure that I'm helping -- or I'm -- because we're going to have to draft up an order.

To make sure I'm understanding, we're saying that we think that the statute -- there are good reasons for the statute; that it is valid; and that it's neutral in general in its application simply just as the administrative law judge determined. Yes.

* * * *

[RAP 0906-0907]

COMMISSIONER JAIRAM: Oh, I just had a comment. And that is, I want to put this one matter to rest, and that is: There was an argument by the respondent saying that they -- you know, that they -- he didn't offer to sell them a wedding cake, but he offered to sell them different products.

Yet, the evidence is there that there was another same sex couple that wanted cupcakes and he refused to serve them. So I think it's a speechless argument to try to say that, you know -- obviously he does not want to -- or he is -- (inaudible) discriminated against these people.

And I believe the -- it was best said by the judges in the New Mexico case, where the laws are here just to protect individuals from humiliation and dignitary harm. And that should be very clear, that is, we do not want people to feel undignified when they walk into any place of business and do business that, you know, serves the public.

And I will also, you know, refer -- you know, I'm referring to the comments made by Justice (inaudible) in that case. And essentially he was saying that if a businessman wants to do business in the state and he's got an issue with the -- the law's impacting his personal belief system, he needs to look at being able to compromise. And I think it was very well said by that judge.

* * * *

COLORADO COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue, Suite 300 Denver, Colorado 80203	
COLORADO CIVIL RIGHTS COMMISSION, DEPARTMENT OF REGULATORY AGENCIES 1560 Broadway, Suite 1050 Denver, CO 80202 2013-0008	
APPELLANTS: MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, **APPELLEES:** CHARLIE CRAIG and DAVID MULLINS.	▲**COURT USE ONLY**▲

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NOTICE OF APPEAL

Appellants, Masterpiece Cakeshop, Inc. and Jack Phillips ("Jack"), by and through counsel, hereby submit this Notice of Appeal pursuant to C.A.R. 3.

I. DESCRIPTION OF THE NATURE OF THE CASE.

A. Nature of the Controversy.

Jack Phillips has owned and operated Masterpiece Cakeshop, Inc. (collectively Jack) since 1994. Jack's bakery specializes in elaborate cake creations that celebrate the important events of his customers' lives. Jack conducts his life and his business in accord with his religious beliefs. Because of this, Jack does not create cakes that conflict with those beliefs. Among these are cakes celebrating same-sex unions because he holds to the religious conviction that marriage is a union between one man and one woman. Nor does Jack create cakes or any baked goods for Halloween, because he does not wish to participate in the celebration of what he believes is a pagan holiday. In July of 2012, Appellees visited Jack's cake shop and requested a wedding cake for their same-sex wedding. Jack declined their request, explaining that he would be happy to provide any other baked goods, but he could not design and create a wedding cake for them because of his beliefs about marriage. Appellees then filed a complaint with the Colorado Division of Civil Rights alleging discrimination because of sexual orientation and the Colorado Civil Rights Commission (Commission) filed a formal complaint against Jack, alleging that he violated Colorado's public accommodation statute – COLO. REV. STAT. § 24-34-601 (2). Jack argued that (1) he did not violate

the statute because he did not decline Appellees' request because of their sexual orientation; (2) the Free Speech Clause of the First Amendment of the U.S. Constitution and the Colorado Constitution protects Jack from being compelled to use his artistic talents to create expression he disagrees with; and (3) COLO. REV. STAT. § 24-34-601 (2) impermissibly burdens Jack's First Amendment Rights under the Free Exercise Clause of the U.S. Constitution and the Colorado Constitution. The Commission appointed an Administrative Law Judge (ALJ) and the case was decided on cross motions for summary judgment and oral argument on December 4, 2013. The ALJ concluded that Jack violated COLO. REV. STAT. § 24-34-601 (2) and the Commission affirmed that decision on May 30, 2014.

B. Order Being Appealed and Statement Indicating the Basis for the Appellate Court's Jurisdiction.

The Appellant seeks review of the Commission's Final Agency Order affirming the ALJ's Initial Decision; denying Appellants' cross-motion for summary judgment and granting Appellees' motion for summary judgment; granting Appellees' motion for protective order; and denying Appellants' motion to dismiss the complaint and motion to dismiss Jack Phillips entered on May 30, 2014. This Court has appellate jurisdiction over this appeal pursuant to COLO. REV. STAT. § 24-34-307 (1) and (2) and COLO. REV. STAT. § 24-4-106 (11).

C. Whether the Order Resolved All Issues Pending before the Agency.

The Order dated May 30, 1014 resolved all issues pending before the Commission, except one. Appellants filed a Motion for Stay of Final Agency Order, seeking to stay the Commission's order pending this appeal. The Motion is pending before the Commission. Should the Commission deny the motion. Appellants will promptly file a stay request in this Court.

D. Whether the order is final for purposes of appeal.

The Commission's order is final pursuant to 3 COLO. CODE REGS. § 708-1, R. 10.13 (D).

E. Date of Service of the Final Agency Order.

The date of service of the Commission's final order is June 2, 2014.

II. ADVISORY LISTING OF THE ISSUES TO BE RAISED ON APPEAL.

A. The ALJ erroneously denied Appellants' Motion to Dismiss Jack Phillips Pursuant to C.R.C.P. 12(b)(l),(2), and (5).

B. The ALJ erroneously denied Appellants' Motion to Dismiss Pursuant to C.R.C.P. 12(b)(5).

C. The ALJ erroneously granted Appellees' Motion for Protective Order and erroneously

struck portions of Appellants' discovery requests thereby limiting Appellants' discovery.

D. The ALJ erred in the Initial Decision by granting Appellees' Motion for Summary Judgment and denying Appellants' Cross-Motion for Summary Judgment. Contrary to the findings in the Initial Decision:

i. Appellants did not discriminate "because of" sexual orientation.

ii. Appellants acted in accordance with the provisions of Colo. Const. art. II, § 31 and COLO. REV. STAT. § 14-2-104, and the public policy of Colorado.

iii. Appellants are protected by the Free Speech Clause of the First Amendment of the United States Constitution and by Article II, Section 10 of the Colorado Constitution from being forced to use their artistic talents to design and create expression they disagree with, here in the form of a wedding cake celebrating a same-sex union.

iv. Appellants are protected by the Free Exercise Clause of the First Amendment of the U.S. Constitution and Article II, Section 4 of the Colorado Constitution from being forced to create a wedding cake celebrating a same-sex union in violation of their deeply held religious beliefs.

v. The ALJ's recommendation that Appellants "[c]ease and desist from discriminating against Complainants and other same-sex couples by refusing to sell them wedding cakes or any other product Appellants would provide to heterosexual couples" is overbroad and exceeds the scope of relief authorized pursuant to COLO. REV. STAT. §§ 24-34-306 (9) and 24-34-605.

III. TRANSCRIPTS

Transcripts of the hearings on September 26, 2013 (approximately 29 pages in length) and May 30, 2014 (approximately 36 pages in length) are necessary to resolve the issues raised on appeal. The transcript of oral argument on December 4, 2013 (approximately 35 pages in length) is necessary to resolve the issues raised on appeal.

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V. APPENDICES TO THIS NOTICE OF APPEAL

A. Final Agency Order dated May 30, 2014;

B. Initial Decision of ALJ dated December 6, 2013;

C. Order Granting Appellees' Motion for Protective Order dated October 9, 2013; and

D. Order Continuing Hearing and Order Regarding Pending Motions dated October 2, 2013.

Respectfully submitted this 16th day of July, 2014.

Attorney for Appellants Masterpiece Cakeshop, Inc. and Jack C. Phillips

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* * * *

STATE OF COLORADO **COLORADO CIVIL RIGHTS COMMISSION** 1560 Broadway, Suite 1050, Denver, Colorado 80202	
CHARLIE CRAIG and DAVID MULLINS, Complainant/Appellant, vs. **MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILIPS,** Respondent/Appellee.	▲**COURT USE ONLY**▲ **Case No:** CR 2013-0008

ORDER ON RESPONDENTS' MOTION FOR STAY OF FINAL AGENCY ORDER

1. The Commission issued a Final Agency Order in this matter on May 30, 2014.

2. Respondents filed a Motion for Stay of Final Agency Order with the Commission on July 15, 2014.

3. Respondents filed a Notice of Appeal with the Colorado Court of Appeals on July 16, 2014.

4. Claimants filed a Response in Opposition to Respondents' Motion for Stay of Final Agency Order on July 24, 2014.

5. The Commission, at its regularly scheduled meeting on July 25, 2014, considered Respondents' Motion and Claimants' response.

Based on the Commission's review and consideration of the pleadings, it is ORDERED that Respondents' Motion for Stay of Final Agency Order dated July 15, 2014 is DENIED.

Dated this 25th day of July, 2014, at Denver, Colorado

/s Raju Jairam
Raju Jairam, Chair
Colorado Civil Rights Commission
1560 Broadway, Suite 1050
Denver, CO 80202

* * * *

COURT OF APPEALS, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, Colorado 80203	
COLORADO CIVIL RIGHTS COMMISSION, DEPARTMENT OF REGULATORY AGENCIES 1560 Broadway, Suite 1050 Denver, Colorado 80202 Case No. 2013-0008	▲COURT USE ONLY▲
RESPONDENTS-APPELLANTS: MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, v. PETITIONERS-APPELLEES: CHARLIE CRAIG and DAVID MULLINS.	

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APPELLEES' AMENDED ANSWER BRIEF	

* * * *

II. Enforcement of CADA Does Not Violate Constitutional Free Speech Provisions.

Phillips' claim that the Commission's order infringes his constitutional right to free expression must fail. Anti-discrimination protections, including CADA, regulate conduct, not speech. When a business

opens its doors to the public, it elects to provide goods and services equitably in accordance with applicable law, and neither the business nor its proprietor engages in constitutionally protected speech by filling customers' orders. CADA does not require Phillips to communicate a government message against his will or to incorporate elements he disagrees with into his own inherently expressive activity. Accordingly, there is no Free Speech violation associated with enforcing Colorado's nondiscrimination law here.

A. Phillips' Work as a Commercial Baker is not Constitutionally Protected Speech.

Phillips contends that his baking of wedding cakes should be immune from regulation under CADA because wedding cakes are "inherently expressive" in nature. Opening Br. 12. But this claim elides the important distinction between an individual's own First Amendment-protected speech, and commercial activity performed on behalf of clients.

Many entities covered by Colorado's public accommodation law provide services that involve design, creativity, or artistry. *See* C.R.S. 24-34-601(1) (defining "place of public accommodation" to include, among other things, "any business offering wholesale or retail sales to the public"). Appellees do not contest that bakers sometimes contribute creativity and design skills in filling customer orders– but the same could be said of hairdressers, software developers, architects, tailors, and a wide variety of other professionals who offer goods or services to the public and thus are public accommodations properly subject

to Colorado's nondiscrimination protections. That performing a particular service or making a particular good entails creativity and design does not render that work constitutionally protected "speech" by the service provider.[5] *See United States v. O'Brien*, 391 U.S. 367, 376 (1968) ("We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea.") Regardless of how much artistry or passion goes into it, commercial work performed for a client is categorically distinct from creative projects undertaken of one's own accord, and is not entitled to the same forms of protection.

Phillips' effort to characterize wedding cakes as *uniquely* expressive is unavailing. Just as many goods sold by public accommodations entail elements of creativity and expression, many customers solicit products from such businesses that are specifically intended to convey messages or commemorate occasions. The fact that a customer expresses a desire to secure an item for a particular occasion does not change a business owner's obligation to make goods

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[5] Business owners in all trades of course have legal autonomy to be selective about which projects they will take on, and can legitimately reject a prospective customer if, for example, the business lacks capacity to fulfill the customer's desired project scope, if the design requested violates a tastefulness policy that applies to everyone's orders, or if the parties cannot agree on a price. The only reasons business owners may *not* reject customers are those prohibited by law –i.e., based on protected characteristics.

and services available equitably.[6] *See Elane*, 309 P.3d at 53 (photography studio violated public accommodations statute by refusing to photograph event because it was the commitment ceremony of two women). The fact that weddings have personal significance for many people illustrates that discrimination in the provision of wedding-related services is hurtful to prospective customers and important to address through enforcement of anti-discrimination laws, not that such laws should be disregarded in circumstances connected with weddings.

Several courts have observed that the messages conveyed by commercial projects entailing design and/or expression are those of the customer, not those of the business or its owner. *See, e.g.*, *Elane*, 309 P.3d

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[6] Appellants attempt to characterize the wedding cake Mullins and Craig ultimately obtained from another vendor, after they were denied service at Masterpiece Cakeshop, as conveying a political message offensive to Phillips. Opening Br. 24. However, the undisputed facts of this case show that Phillips denied service based only on the fact that Appellees were two men marrying each other, before the consultation progressed to talk of colors, filling, or anything else about the type of cake they wanted. Supp. PR. CF, Vol. 1, p. 5; *see also id.* at p. 716 n.7. Characteristics of the particular cake Craig and Mullins secured elsewhere, after they suffered illegal discrimination at Masterpiece Cakeshop, has no bearing on the legality of Phillips' categorical refusal to discuss what order they might like to place. Although Masterpiece Cakeshop continues to try to make cake characteristics an issue in this case, that question simply is not before this Court. The record here is clear that Masterpiece Cakeshop's policy of denying wedding cake service to certain customers was based on customers' identities, not on distinct characteristics of the cakes they sought, and thus the policy constituted illegal discrimination.

at 68-69 (rejecting argument that studio's taking of photographs for hire could be perceived as its or its' owners approval of marriage by same-sex couples); *Nathanson v. Mass. Comm'n Against Discrimination*, 2003 WL 22480688, *6 - *7 (Mass. Super. 2003) (attorney was subject to Massachusetts public accommodations law and could not legally refuse service to a prospective client based on gender; First Amendment defense failed because in advocating for a client, she "operates more as a conduit for the speech and expression of the client, rather than as a speaker for herself.") It would be illogical for customers to pay for the promulgation of a *service provider's* chosen message; instead, patrons pay for goods and services that often entail the expression of their *own* messages. *See generally Hishon v. King & Spalding*, 467 U.S. 69, 71-78 (1984) (rejecting law firm's claim that applying federal employment discrimination law to its partner selection process "would infringe constitutional rights of expression or association" because "[i]nvidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections.") Thus, anti-discrimination laws appropriately regulate service providers' conduct in fulfilling the wishes and, in some cases, conveying the messages of clients, rather than any aspect of service providers' own expressive activities.

* * * *

COLORADO COURT OF APPEALS, STATE OF COLORADO 2 East 14th Avenue, Suite 300 Denver, CO 80203	DATE FILED: April 13, 2015 4:23 PM FILING ID: E279749BE1615
COLORADO CIVIL RIGHTS COMMISSION DEPARTMENT OF REGULATORY AGENCIES 1560 Broadway, Suite 1050 Denver, Colorado 80202	CASE NUMBER: 2014CA1351
RESPONDENTS-APPELLANTS: MASTERPIECE CAKESHOP, INC. and any successor entity, and JACK C. PHILLIPS, v. PETITIONERS-APPELLEES: CHARLIE CRAIG and DAVID MULLINS.	

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APPELLANTS' NOTICE OF SUPPLEMENTAL AUTHORITY	

Pursuant to C.A.R. 28 (j), Appellants Masterpiece Cakeshop, Inc., and Jack C. Phillips hereby notify the Court of recent developments in other cases that support Appellants' appeal in this case. These recent developments include Determinations issued by the Colorado Civil Rights Division in three related matters: (1) *Jack v. Azucar Bakery*, No. P20140069X, Determination (Colo. Civ. Rights Div. March 24, 2015) (attached as Exhibit A); (2) *Jack v. Le Bakery Sensual, Inc.*, P20140070X, Determination (Colo. Civ. Rights Div. March 24, 2015) (attached as Exhibit B); and (3) *Jack v. Gateaux, Ltd.*, No. P20140071X, Determination (Colo. Civ. Rights Div. March 24, 2015) (attached as Exhibit C).

Those cases involve discrimination complaints filed by William Jack against three Colorado bakeries. He alleged that the bakeries' refusal to create cakes displaying religious messages that their owners consider objectionable constitutes religious discrimination in violation of Colorado's Anti-Discrimination Act (CADA). After conducting an investigation, the Colorado Civil Rights Division determined that no probable cause supported Mr. Jack's claims. Although Mr. Jack is "a member of a protected class," the Division concluded that the bakeries' decisions not to create the cakes were based on the religious "message" on the cakes rather than Mr. Jack's religious status. *See* Exhibit A at 4. As the Division explained in rejecting the claims against Azucar Bakery:

> The circumstances do not give rise to an inference that [Azucar Bakery] denied [Mr. Jack] goods or services based on his [religion].

> Indeed, the evidence demonstrates that [Azucar Bakery] would have made a cake for [Mr. Jack] . . . regardless of his [religion]. Instead, the [business's] denial was based on the explicit message that [Mr. Jack] wished to include on the cakes . . . . Additionally, the evidence demonstrates that [Azucar Bakery] regularly creates cakes . . . ordered by Christian customers.

Exhibit A at 4. The Division came to the same conclusion in the two other matters involving Mr. Jack based on similar reasoning. *See* Exhibit B at 4; Exhibit C at 4.

These Determinations, and their analysis, directly support Appellants' contention that the Colorado Civil Rights Commission misconstrued the public accommodations law by concluding that Appellants engaged in unlawful discrimination here. Just like the bakeries in the matters cited above, Appellants have shown that they (1) would have provided the complainants other baked goods, Appellants' Opening Brief at 4; (2) gladly serve people from the protected class at issue, *id.* at 4, 6-7; and (3) have a policy and history of declining other requests for unique cake creations that convey messages contrary to their religious convictions, such as cakes with messages celebrating atheism, racism, indecency, or Halloween, *id.* at 4; *see also* Appellants' Reply Br. at 6.

Respectfully submitted this 13th day of April, 2015.

Attorney for Appellants Masterpiece
Cakeshop, Inc. and Jack C. Phillips

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* * * *

Exhibit A

COLORADO
Department of
Regulatory Agencies
Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

Charge No. P20140069X

William Jack
* * *
Castle Rock, CO 80104 Charging Party

Azucar Bakery
* * *
Denver, CO 80210 Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed. Instead, the evidence reflects that the Respondent declined to make the Charging Party's cakes, as he had envisioned them, because he requested the cakes include derogatory language and imagery. The

evidence demonstrates that the Respondent would deny such requests to any customer, regardless of creed.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was treated unequally and denied goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the requested cake by the Charging Party was denied solely on the basis that the writing and imagery were "hateful and offensive".

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts

back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P .2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Pastry Chef Lindsay Jones ("Jones") (Christian). The Charging

Party asked Jones for a price quote on two cakes made in the shape of open Bibles. The Charging Party requested that one of the cakes include an image of two groomsmen, holding hands in front of a cross, with a red "X" over the image. The Charging Party also requested that each cake be decorated with Biblical verses. On one of the cakes, he requested that one side read "God hates sin. Psalm 45:7" and on the opposite side of the cake "Homosexuality is a detestable sin. Leviticus 18:2." On the second cake, which he requested include the image of the two groomsmen with a red "X" over them, the Charging Party requested that it read: "God loves sinners," and on the other side "While we were yet sinners Christ died for us. Romans 5:8." The Charging Party did not state that the cakes were intended for a specific purpose or event.

After receiving the Charging Party's order, Jones excused herself from the counter and discussed the order with Owner Marjorie Silva ("Silva") (Catholic) and Manager Michael Bordo ("Bordo") (Catholic). Silva came to the counter to speak with the Charging Party. Silva asked the Charging Party about his general cake request and the Charging Party explained that he wanted two cakes made to look like Bibles. The Charging Party then explained to Silva that he wanted the verses as referenced above to appear on the cakes.

Silva states that she does not recall the specific verses that the Charging Party requested, but recalls the words "detestable," "homosexuality," and "sinners." The parties dispute what occurred next. The Charging Party alleges that Silva told him that she

would have to consult with an attorney to determine the legality of decorating a cake with words that she felt were discriminatory. Silva denies that she told the Charging Party that she needed to consult with an attorney, and states that she informed the Charging Party that she would make him cakes in the shape of Bibles, but would not decorate them with the message that he requested. Silva states that she declined to decorate the cakes with the verses or image of the groomsmen and offered instead provide him with icing and a pastry bag so he could write or draw whatever message he wished on the cakes himself. Silva also avers that she told the Charging Party that her bakery "does not discriminate" and "accept[s] all humans."

Later that day, the Charging Party returned to the bakery to inquire if Silva was still declining to make the cakes as requested. Bordo states that he reiterated the bakery would bake the cakes, but would not decorate them with the requested Biblical verses or groomsmen. The Charging Party asked Bordo if "he consider[ed] not baking [his] cake discrimination against [him] as a Christian," to which Bordo responded "no." The Charging Party then left the bakery.

The Charging Party maintains that he did not ask the Respondent or its employees to agree with or endorse the message of his envisioned cakes.

The Respondent avers that the Charging Party's request was not accommodated because it deemed the design and verses as discriminatory to the gay, lesbian, bisexual, and transgender community. The

Respondent further states that "in the same manner [it] would not accept [an order from] anyone wanting to make a discriminatory cake against Christians, [it] will not make one that discriminates against gays." The Respondent states that it welcomes all customers, including the Charging Party, regardless of their protected class.

The evidence demonstrates that the Respondent specializes in cakes for various occasions, including weddings, birthdays, holidays, and other celebrations. On the Respondent's website, there are images of cakes created for customers in the past. There are numerous cakes decorated with Christian symbols and writing. Specifically, in the category of "Baby Shower and Christening Cakes" there are images of three cakes depicting the Christian cross, two of which include the words "God Bless" and one inscribed with "Mi Bautizo" (Spanish for "my baptism"). There is also an image of a wedding cake created by the Respondent depicting an opposite sex couple embracing in front of a Christian cross. The Respondent's website also provides that the bakery will make cakes "for every season of the year," including the Christian holidays of Easter and Christmas.

The Respondent states that it has previously denied cake requests due to business constraints, such as inability to meet customer deadlines due to high demand, but maintains that it would deny any requests deemed "offensive" or "hateful."

Comparative data reflects that the Respondent employs six persons, of whom three are Catholic and

three are non-Catholic Christian. The record reflects that, in an average year, the Respondent produces between 60 and 80 cakes with Christian themes and/or symbolism.

Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words "un-Biblical and inappropriate." The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by "demeaning his beliefs." There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than customers outside of his protected class.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence

must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought services or goods from the Respondent; (3) the Charging party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Respondent was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is, in his words "un-Biblical and inappropriate." The Respondent denied the Charging Party's request to make cakes that included the Biblical verses and an image of groomsmen with a red "X" over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Indeed, the evidence demonstrates that the Respondent would have made a cake for the Charging Party for any event, celebration, or occasion regardless of his creed. Instead, the Respondent's denial was based on the explicit message that the Charging Party wished to include on the cakes, which the Respondent deemed as discriminatory. Additionally, the evidence demonstrates that the Respondent regularly creates cakes with Christian themes and/or symbolism, which are presumably ordered by Christian customers. Finally, the Respondent avers that it would similarly deny a request from a customer who

requested a cake that it deemed discriminatory towards Christians.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or

b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division

s/Jennifer McPherson — *3/24/2015*

Jennifer McPherson, — Date
Interim Director
Or Authorized Designee

Exhibit B

COLORADO
Department of
Regulatory Agencies
Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

Charge No. P20140070X

William Jack
* * *
Castle Rock, CO 80104 Charging Party

Le Bakery Sensual, Inc.
* * *
Denver, CO 80203 Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or service based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake requested by the Charging Party was denied solely on the basis that the writing and imagery were "hateful."

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that

the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P .2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Owner John Spotz ("Spotz") (no religious affiliation). The Charging Party asked Spotz for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble open Bibles. Spotz informed the Charging Party that he "had done open Bibles and

books many times and that they look amazing." The Charging Party then elaborated that on one cake, he wanted an image of two groomsmen, appearing before a cross, with a red "X" over the image. The Charging Party described the image as "a Ghostbusters symbol over the illustration to indicate that same-sex unions are un-Biblical and inappropriate." The Charging Party wanted Biblical verses on both cakes. The Charging Party showed Spotz the verses, which he had written down on a sheet of paper, and read them aloud. The verses were: "God hates sin. Psalm 45:7" "Homosexuality is a detestable sin. Leviticus 18:2" and on the cake with the image of groomsmen before a cross with a red "X", the verses: "God loves sinners" and "While we were yet sinners Christ died for us. Romans 5:8."

After the Charging Party made the request for the image of the groomsmen with the "X" over them, Spotz asked if the Charging Party was "kidding him." The Charging Party responded that his request was serious. Spotz then informed the Charging Party that he would have to decline the order as envisioned by the Charging Party because he deemed the requested cake "hateful." The Charging Party did not state to Spotz or the Division whether the cakes were intended for a specific purpose or event. The Charging Party then left the baker, after Spotz declined to create the cakes as the Charging Party had requested.

The Charging Party maintains that he did not ask the Respondent, or its employees, to agree with or endorse the message of his envisioned cakes.

The Respondent avers that everyone, including the Charging Party, is welcome at its bakery, regardless of creed, race, sex, sexual orientation or disability. The Respondent states that its refusal to create the specific cake requested by the Charging Party was based on its policy "not [to] make a cake that is purposefully hateful and is intended to discriminate against any person's creed, race, sex, sexual orientation, disability, etc." The Respondent avers that the Charging Party's request was intended to "denigrate individuals of a specific sexual orientation."

The record reflects that the Respondent specializes in making unique and intricate cakes for various occasions. The Respondent's website provides "[it] can design cakes that look like people, cars, motorcycles, houses, magazines, and just about anything you can imagine." The Respondent's website also includes images of cakes it has created for customers in the past, including cakes made to look like books and magazines. The Respondent also makes wedding cakes for both opposite sex and same sex couples, as well cakes for the Christian holidays of Christmas and Easter.

The Respondent denies that it has ever denied services or goods to customers based on their creed and/or religion.

It is the Respondent's position that production of the cake requested by the Charging Party would run afoul of C.R.S. § 24-34-701, which provides that a place of public accommodation may not "publish . . . or display in any way manner, or shape by any means or method

. . . any communication . . . of any kind, nature or description that is intended or calculated to discriminate or actually discriminates against any . . . sexual orientation . . . ."

Spotz states that the only time he recalls denying a cake request was when he received a phone call in which the caller asked if he could decorate a cake with "a sexy little school girl."

Comparative data reflects that the Respondent employs four persons, of whom one is Catholic, one is Jewish, and two have no religious affiliation. The record reflects that the Respondent creates at least one Christian themed cake per month, increasing to three or four Christian themed cakes in the month of December.

Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical

verses and imagery indicating that same-sex marriage is, in his words "un-Biblical and inappropriate." The Charging Party alleges that the Respondent treated him differently than persons of non-Christian creed by "demeaning his beliefs." There is insufficient evidence to demonstrate the Respondent treated the Charging Party differently than other customers because of his creed.

The Charging Party's request was denied because he requested the cakes include language and images the Respondent deemed hateful.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party sought to order two cakes from the Respondent bearing Biblical verses and imagery indicating that same-sex marriage is "un-Biblical and inappropriate." The Respondent denied the Charging Party's request to

make cakes that included the requested Biblical verses and an image of groomsmen with a red "X" over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence demonstrates that the Respondent was prepared to create the cakes as described by the Charging Party, until he requested the specific imagery of the two groomsmen with a red "x" placed over image and the "hateful" Biblical verses. Additionally, the record reflects that the Respondent has produced cakes featuring Christian symbolism in the past, which were presumably ordered by Christian customers.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601 (2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or

b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division

s/Jennifer McPherson — *3/24/2015*
Jennifer McPherson, — Date
Interim Director
Or Authorized Designee

Exhibit C

COLORADO
Department of
Regulatory Agencies
Colorado Civil Rights Division

1560 Broadway Street, Suite 1050
Denver, CO 80202

Charge No. P20140071X

William Jack
* * *
Castle Rock, CO 80104 Charging Party

Gateaux, Ltd.
* * *
Denver, CO 80204 Respondent

DETERMINATION

Under the authority vested in me by C.R.S. 24-34-306 (2), I conclude from our investigation that there is insufficient evidence to support the Charging Party's claims of unequal treatment and denial of goods or services based on creed. As such, a **No Probable Cause** determination hereby is issued.

The Division finds that the Respondent did not discriminate based on the Charging Party's creed, but instead refused to create cakes for anyone, regardless of creed, where a customer requests derogatory language or imagery.

The Respondent is a place of public accommodation within the meaning of C.R.S. 24-34-601 (1), as re-enacted, and the timeliness and all other jurisdictional requirements pursuant to Title 24, Article 34, Parts 3 and 6 have been met.

The Charging Party alleges that on or about March 13, 2014, he was denied equal treatment and access to goods or services in a place of public accommodation based on his creed, Christianity. The Respondent denies the allegations of discrimination and avers that the cake order requested by the Charging Party was denied because the cakes included what was deemed to contain "offensive" or "derogatory" messages and imagery. In addition, the Respondent was uncertain whether it could technically create the cakes as described by the Charging Party.

The legal framework under which civil rights matters are examined is as follows: The initial burden of proof rests on the Charging Party to prove his/her case. Each key or essential element ("prima facie") of the particular claim must be proven, through a majority ("preponderance") of the evidence. If the Charging Party meets this initial burden of proof, then the Respondent has the next burden of explaining, with sufficient clarity, a business justification for the action taken. This is in response to the specific alleged action named in the charge. In addition, the Respondent has the burden of production of sufficient documents and other information requested by the administrative agency during the civil rights investigation. If the Respondent offers a legitimate business reason, then the burden once again shifts

back to the Charging Party to prove that this proffered legitimate business reason is a pretext for discrimination. At this stage, the Charging Party must prove, again through sufficient evidence, that the true and primary motive for the Respondent's actions is unlawful discrimination.

"Unlawful discrimination" means that which is primarily based on the Charging Party's asserted protected group or status. The Respondent's stated reasons for its actions are presumed to be true, unless and until the Charging Party, again through competent evidence found in this investigation, adequately shows that the Respondent's reason is pretext; is not to be believed; and that the Charging Party's protected status was the main reason for the adverse action taken by the Respondent. The Charging Party does not need to submit additional evidence, in response to the Respondent's position, but the available evidence must be legally sufficient so that a reasonable person would find that the Respondent intended to discriminate against the Charging Party because of his/her protected civil rights status. Colorado Civil Rights Commission v. Big O Tires, Inc., 940 P.2d 397 (Colo. 1997), and Ahmad Bodaghi and State Board of Personnel, State of Colorado v. Department of Natural Resources, 995 P .2d 288 (Colo. 2000).

The Respondent is a bakery operating within the State of Colorado.

The Charging Party visited the Respondent's store on or about March 13, 2014, and was met by Manager Michelle Karmona ("Karmona"). The Charging Party

asked Karmona for a price quote on two cakes. The Charging Party requested that two sheet cakes be made to resemble an open Bible. He also requested that each cake be decorated with Biblical verses. The Charging Party requested that one of the cakes include an image of two groomsmen, holding hands, with a red "X" over the image. On one cake, he requested that one side read "God hates sin. Psalm 45:7" and on the opposite side of the cake "Homosexuality is a detestable sin. Leviticus 18:2." On the second cake, with the image of the two groomsmen covered by a red "X" the Charging Party requested that it read: "God loves sinners" and on the other side "While we were yet sinners Christ died for us. Romans 5:8." The Charging Party did not state to the Respondent or the Division whether the cake was intended for a specific purpose or event.

The parties dispute the events that occurred next. The Charging Party alleges that Karmona initially indicated that the Respondent would be able to make the Bible shaped cakes, but once she read the Biblical verses, she excused herself from the counter. The Charging Party further alleges that Karmona returned a short time later, informing him that she had spoken with the Respondent's Owner, Kathleen Davia ("Davia") (Catholic). The Charging Party claims that at this time Karmona informed him that the Respondent would bake the cakes, but would not include such a "strong message." The Respondent denies that this occurred, claiming instead that the Charging Party had indicated that he wanted the groomsmen to be three-dimensional figurines with a "Ghostbusters X" over the figures. Karmona felt the Respondent would be unable to accommodate the

request as described by the Charging Party, based on "technical capabilities." The Respondent claims that the Charging Party was told that the Bible-shaped cakes, with the Biblical verses, *sans* the groomsmen figurines and "Ghostbusters X," could be made.

The Respondent avers that, as with all customers, the Charging Party was asked to elaborate as to the purpose of the cakes, how he wished to present it, and how he would use it. The Charging Party would not provide an explanation to the Respondent. The Respondent alleges that it was the Charging Party's refusal to elaborate that left it with the impression that it would not be able to produce the cakes as requested by the Charging Party. The Respondent avers that it consistently requests that customers provide an image for them to replicate when it is something the Respondent does not "stock." For example, the Respondent avers that a customer requesting a cake with the image of a popular cartoon character can easily be created; however, when a customer requests a specific image without a photo reference or elaboration of the image, the Respondent will decline the request. Karmona then referred the Charging Party to another bakery with the belief that that bakery would be better suited to create the cakes as envisioned by the Charging Party.

The Respondent does not have a specific policy regarding the declination of a customer request, but states that the employee who receives the order also decorates the cake. It is the Respondent's position that, based on its individual employees' pastry knowledge, experience, and qualifications, they are best able to determine whether they have the ability

to create the cake that a customer requests. Therefore, in the case of the Charging Party's request, Karmona determined that she would be unable to create the cakes as the Charging Party described.

The Respondent states that it has previously denied customer requests based on technical requirements, including inability to create the requested image, and requests for buttercream iced cakes where the Respondent maintained a fondant decorated cake would be preferable. Additionally, the Respondent states that it has denied customer requests for cakes that included crude language such as "eat me" or "ya old bitch" or "naughty images," on the basis that the imagery and messages were not what the Respondent wished to represent in its products. The Respondent's other reasons for declining customers' request include: availability of the product, insufficient time to create the cake requested, and scheduling conflicts.

The Charging Party avers that he did not ask the Respondent, or any of its employees, to agree with or endorse the message of his envisioned cakes.

Comparative data indicates that the Respondent employs six persons, of whom two are non-Catholic Christian, two are Agnostic, one is Catholic, and one is Atheist. The record reflects that the Respondent regularly creates Christian themed cakes and pastries, including items for several Catholic and non-Catholic Christian church events. Additionally, the evidence demonstrates that they have produced a number of cakes with Christian imagery and symbolism during the relevant time period.

The Respondent states that the Charging Party is welcome to return to the bakery.

Unequal Treatment

To prevail on a claim of discriminatory denial of equal treatment, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought the goods and services of the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; and (4) the Charging Party was treated differently by the Respondent than other individuals not of his/her protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words "un-Biblical and inappropriate." The Charging Party alleges that the Respondent treated him differently than persons outside of his protected class by "demeaning his beliefs." The evidence demonstrates that the Respondent attempted to engage the Charging Party in a dialogue regarding the cakes in more detail, which the Charging Party declined. There is insufficient evidence to demonstrate that the Respondent treated the Charging Party differently based on his creed. The evidence demonstrates that the Respondent would not create cakes with wording and images it deemed derogatory. The Respondent

has denied other customers request for derogatory language without regard to the customer's creed.

Denial of Service

To prevail on a claim of discriminatory denial of goods, services, benefits, or privileges, the evidence must show that: (1) the Charging Party is a member of a protected class; (2) the Charging Party sought services or goods from the Respondent; (3) the Charging Party is otherwise a qualified recipient of the goods and services of the Respondent; (4) the Charging Party was denied services or goods by the Respondent; (5) under circumstances that give rise to an inference of unlawful discrimination based on a protected class.

The Charging Party is a member of a protected class based on his creed, Christianity. The Charging Party was a qualified recipient of the goods and services of the Respondent. The Charging Party visited the Respondent and sought two cakes bearing Biblical verses and imagery indicating that same-sex marriage is, in his words "un-Biblical and inappropriate." The Respondent denied the Charging Party's request to make cakes that included the Biblical verses and an image of groomsmen with a red "X" over them. The circumstances do not give rise to an inference that the Respondent denied the Charging Party goods or services based on his creed. Instead, the evidence suggests that based on the Respondent's understanding of the Charging Party's request, it would be unable to create the cake that he envisioned. The record reflects that the Respondent has denied customer requests for similar reasons.

Additionally, the evidence demonstrates that the Respondent regularly produces cakes and other baked goods with Christian symbolism and messages, and continues to welcome the Charging Party in its bakery.

Based on the evidence contained above, I determine that the Respondent has not violated C.R.S. 24-34-601(2), as re-enacted.

In accordance with C.R.S. 24-34-306(2)(b)(I)(A) and Rule 10.6(A)(1) of the Commission's Rules of Practice and Procedure, the Charging Party may appeal the dismissal of this case to the Commission within ten (10) days, as set forth in the enclosed form.

If the Charging Party wishes to file a civil action in a district court in this state, which action is based on the alleged discriminatory or unfair practice that was the subject of the charge filed with the Commission, such must be done:

a. Within ninety days of the mailing of this notice if no appeal is filed with the Colorado Civil Rights Commission or

b. Within ninety days of the mailing of the final notice of the Commission dismissing the appeal.

If Charging Party does not file an action within the time limits specified above, such action will be barred and no State District Court shall have jurisdiction to hear such action [CRS 24-34-306(I)].

On Behalf of the Colorado Civil Rights Division

s/Jennifer McPherson — *3/24/2015*

Jennifer McPherson, — Date
Interim Director
Or Authorized Designee

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: April 25, 2016 CASE NUMBER: 2015SC738
Certiorari to the Court of Appeals, 2014CA1351 Civil Rights Commission, CR20130008	
Petitioner: Masterpiece Cakeshop Inc. and Jack C. Phillips, v. **Respondents:** Colorado Civil Rights Commission, Charlie Craig, and David Mullins.	Supreme Court Case No: 2015SC738

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

CHIEF JUSTICE RICE AND JUSTICE COATS WOULD GRANT as to the following issues:

Whether the Colorado Anti-Discrimination Act ("CADA") requires Phillips to create artistic expression that contravenes his religious beliefs about marriage.

Whether applying CADA to force Phillips to create artistic expression that contravenes his religious beliefs about marriage violates his free speech rights under the United States and Colorado Constitutions.

Whether applying CADA to force Phillips to create artistic expression that violates his religious beliefs about marriage infringes his free exercise rights under the United States and Colorado Constitutions.

BY THE COURT, EN BANC, APRIL 25, 2016.
JUSTICE EID does not participate.

Code of Colorado Regulations
Secretary of State
State of Colorado

DEPARTMENT OF REGULATORY AGENCIES

Civil Rights Commission

STATE OF COLORADO CIVIL RIGHTS COMMISSION RULES AND REGULATIONS

3 CCR 708-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

RULES OF PRACTICE AND PROCEDURE

Rule 10.1 - General Statement of Purpose.

The general purpose of the Rules and Regulations of the Colorado Civil Rights Commission is to implement Parts 3 through 7 of Article 34 of Title 24, C.R.S. (1988), as amended.

Rule 10.2 - Definitions.

(A) "Administrative Law Judge" (ALJ) means an administrative law judge appointed by the commission through the division of administrative hearings of the Department of Administration or appointed by the Governor at the request of the commission as defined in § 24-34-305(1)(d)(I), C.R.S. (1988), as amended.

(B) "Chair" means the elected head of the Colorado Civil Rights Commission or, in his or her absence or inability to serve, the acting head.

(C) "Commission" means the Colorado Civil Rights Commission, created by § 24-34-303, C.R.S. (1988), as amended, with all the power defined in § 24-34-305, C.R.S. (1988), as amended.

(D) "Commissioner" means a duly appointed member of the commission.

(E) "Commission's Counsel" means the attorneys at law who present a case in support of a complaint before an administrative law judge or represent the commission and division in the furtherance of statutory authority.

(F) "Counsel" means the attorneys at law licensed to practice law in Colorado representing the parties, attorneys from other jurisdictions admitted to practice law before state agencies pursuant to Rule 221.1, C.R.C.P. and law students admitted to appear in court pursuant to Rule 226, C.R.C.P.

(G) "Director" means the head of the Colorado Civil Rights Division, or member of the staff delegated authority by the director to investigate allegations of discrimination, to determine whether probable cause exists, to conciliate charges and to report to the

commission in accordance with § 24-34-306, C.R.S. (1988), as amended.

(H) "Discriminatory or Unfair Practice" means one or more acts, practices, commissions or omissions prohibited by laws administered by the division and the commission.

(I) "Division" means the Colorado Civil Rights Division, created by § 24-34-302, C.R.S. (1988), as amended.

(J) "Investigation" means the systematic inquiry into the allegation of the charge by the division and its staff. Investigation activities shall include, but are not limited to, collecting and analyzing statistical data and other documentary evidence; visiting respondent's place of business, public accommodation or housing; interviewing witnesses; reviewing relevant records; issuing questionnaires upon the respondent concerning the alleged discriminatory act; issuing subpoenas in cases involving employment or housing charges; and the holding of informal fact-finding meetings with the parties.

(K) "Law" means any or all of the laws administered by the Colorado Civil Rights Division, including Parts 3 through 7 of Article 34 of Title 24, C.R.S. (1988), as amended, to be cited as § 24-34-301 to 707, C.R.S. (1988), as amended.

(L) "Mail" means first class mail.

(M) "Party" or "parties" means the complainant, charging party or the respondent.

(N) "Petitioner" means the party who applies to the appropriate court for judicial review or enforcement of final agency action or a party seeking declaratory relief under Rule 10.10 of these rules.

(O) "Staff" means the director and all persons employed to carry out the functions and duties of the division.

* * * *

Rule 10.4 - Charges.

(A) Who May File.

Any person, directly or by an attorney at law, or, in like manner, the commission, a commissioner or the attorney general may file a charge in accordance with § 24-34-306(1), 24-34-404, 24-34-504(1) or 24-34-505, C.R.S. (1988), as amended.

Housing charges may be filed as designated above but may also be filed by an aggrieved person with the assistance of a representative authorized by such aggrieved person, including any organization.

(B) Form.

Charges shall be in writing and in duplicate, and shall be signed and verified by the charging party.

(C) Contents.

Charges shall contain the following:

(1) The full name and mailing address of the party or parties charging a discriminatory or unfair practice.

(2) The full name and mailing address of the party or parties alleged to have committed the discriminatory or unfair practice.

(3) A short and plain statement of the facts, including particulars which give rise to the alleged violation and which set forth the alleged unfair housing practice; or discriminatory or unfair employment practice; or discrimination in places of public accommodation, amusement and resort, and in advertising.

(4) The date or dates the alleged discriminatory or unfair practice occurred or, if the discriminatory or unfair practice charged is of a continuing nature, the date of said practice shall be any date from the date it is alleged to have begun until the date the charge is signed and,

unless otherwise indicated, to and beyond the date the charge is signed.

(D) Exception.

Under the provisions of § 24-34-602 and 705, C.R.S. (1988), as amended, civil or criminal proceedings instituted by a party claiming to be aggrieved by discrimination in a place of public accommodation or by discriminatory advertising shall be a bar to proceedings before the Colorado Civil Rights Commission and Colorado Civil Rights Division.

(E) Place of Filing.

Charges shall be filed with the commission at offices of the Colorado Civil Rights Division or at other offices of local, state or Federal government designated by the commission to accept written charges of discrimination. A list of these offices with current addresses and telephone numbers shall be available from any of the Civil Rights Division offices.

(F) Time Limits on Filing.

(1) Charges of unfair or discriminatory practices shall be filed within the time limits listed below, in accordance with the law.

(2) Any charge filed pursuant to § § 24-34-403, 504, 604 and 706, C.R.S. (1988), as amended, shall be barred if not

filed within the time limits set forth therein.

(3) The charge shall be deemed filed as of the date of receipt at an office designated by the commission.

(G) Manner of Filing.

(1) Charges shall be filed either by personal delivery or mail, addressed to the commission at any office designated in Rule 10.4(E). Staff members shall be available to assist in the drafting and filing of charges at the division's offices.

(2) Upon receipt of the charge and prior to any action by the commission, the division shall personally deliver or mail a copy of the charge and notice with certificate of mailing to the charging party and to the respondent. The notice shall acknowledge the filing of the charge and contain an advisement to the parties of the time limits applicable to charge processing and of the procedural rights and obligations of parties as set out in § § 24-34-504 and § § 24-34-505.6, C.R.S. (1988), as amended.

(H) Amendments.

(1) Charging parties and the commission, a commissioner or the attorney general shall have the right to reasonably amend charges.

(2) Amendments shall be filed in the same manner as provided for the filing of the original charge in Rules 10.4(B) and 10.4(C).

(3) Amendments to the charge may include, but are not limited to: amendments to cure technical defects or omissions, including failure to sign or verify a charge, to clarify or amplify the allegations therein, or to join additional or substitute parties. Such amendments and amendments alleging additional acts which constitute unlawful, unfair or discriminatory practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received.

(4) Amendments shall be personally delivered or mailed to the respondent in the same manner as the original charge, as provided in Rule 10.4(G)(2).

(I) Withdrawal.

The director may allow charging parties, the commission, a commissioner or the attorney general to withdraw a charge or its amendments prior to the time a complaint has been issued by the commission. Thereafter, withdrawal of charges and of complaints may only be made with the approval of the commission.

(J) Additional and New Charges.

Charging parties, the commission, a commissioner or the attorney general may file new or additional charges alleging discriminatory or unfair acts which have happened since the date of the original or amended charges. Such new or additional charges shall be filed pursuant to procedures set forth in this Rule 10.4.

Rule 10.5 - Investigation, Dismissal and Conciliation.

(A) Expedited Resolution.

Before the director conducts an in-depth investigation, the charging party and the respondent may be invited to meet with division staff in an attempt to resolve the charge and to discuss the charge.

(B) Discovery.

The director may use discovery procedures as provided in the Colorado Rules of Civil Procedure during the investigation of a charge.

(C) Subpoenas.

The director shall exercise the subpoena power as provided by law in the investigation of a charge and shall have the authority to sign and issue a subpoena requiring:

(1) the attendance and testimony of witnesses either informally or under oath;

(2) the production of evidence including, but not limited to, books, papers, records, correspondence or documents, including those stored on electronic media, in the possession or under the control of the person subpoenaed, and;

(3) access to evidence for the purposes of examination and the right to copy.

(D) Dismissal.

If the director determines based either upon the face of the charge or upon the information gathered during the investigation that probable cause for

crediting the allegations of a charge does not exist, the director shall dismiss the charge and notify the charging party in writing by either personal delivery or mail at the charging party's last known address, together with a notice of the charging party's right to appeal the dismissal to the commission as provided by § 24-34-306(2)(b), C.R.S. (1988), as amended, and Rule 10.6. A copy of such notice shall be delivered or mailed to the respondent named in the charge.

(E) Conference, Conciliation and Persuasion.

(1) If for whatever reason the charging party fails or refuses to sign a proposed conciliation agreement which the director has accepted on behalf of the division, the charging party has the right to appeal the director's action to the commission as provided in Rule 10.6. A written notice of the director's action and report shall be mailed to all parties at their last known address no later than five days prior to the date the report is made to the commission.

(2) If conciliation fails and the commission issues a written notice and complaint, the notice and complaint shall be delivered or mailed to the respondent at the last known address. If the notice is not served

within 270 days after the filing of the charge, plus any extensions permitted as provided in § 24-34-306(11), C.R.S. (1988), as amended, the jurisdiction of the commission over the complaint shall cease, and the charging party may seek relief authorized in the law.

(F) Disclosure.

Without the written consent of all the parties, the commission, the director and the staff shall not disclose the filing of a charge, the information gathered during the investigation, or the efforts to eliminate such discrimination or unfair practice by conference, conciliation or persuasion unless the disclosure is made in connection with the conduct of the investigation, in connection with the filing of a petition seeking appropriate injunctive relief against the respondent under § 24-34-507, C.R.S. (1988), as amended, or at a public hearing. Nothing in this paragraph shall be construed to prevent the commission, the director or the staff from disclosing final action on a charge, including the reasons for dismissing the charge and terms of a conciliation agreement, or the contents of an order issued after hearing.

(G) Evidence Examination.

Any of the parties or their counsel may examine any evidence contained in the investigative file of the charge, excluding documents or information made confidential by law. Evidence does not include commission or division staff work products or documents excluded by attorney-client privilege.

(H) Notice of Right to Sue.

(1) Issuance prior to 180 days

(a) If the charging party/complainant makes a written request for a notice of right to sue prior to the expiration of 180 days following the filing of the charge, the commission, a commissioner, or the administrative law judge shall grant the request, based upon a determination that the investigation of the charge will not be completed within 180 days. The decision to issue a notice of right to sue will be decided on a case-by-case basis, taking into account the workload of the division and the priority assigned to the charge. Factors which may be considered in the

determination include, but are not limited to, whether the director has asserted that the investigation of the charge is not likely to be completed within 180 days, whether the division has prepared documents to dismiss a charge that is untimely, and/or whether a concurrent request for a notice of right to sue has been made to the appropriate federal agency.

(b) If a determination is made to issue the notice of right to sue prior to the expiration of 180 days from the date of filing the charge, the commission, a commissioner, or the administrative law judge will direct that the notice, with a written certification to that effect, be issued through the division.

(c) The commission, a commissioner, or the administrative law judge may not grant the request for notice of right to sue prior to expiration of the 180 days from the date of filing the charge, if the director asserts that the investigation is nearing completion or will

be completed within 180 days of filing, and the charging party/complainant will be so informed.

(2) Issuance after 180 days:

(a) If the charging party/complainant makes a written request for a notice of right to sue after the expiration of 180 days following the filing of the charge, the director may summarily grant the request provided that the commission has not caused to be served a written notice and complaint pursuant to § 24-34-306(4), C.R.S. (1988), as amended.

(b) The notice of right to sue may be issued at any time by the director prior to the expiration of 270 days, but not before 180 days, after the filing of the charge, with any extension of time granted pursuant to § 24-34-306(11), C.R.S. (1988), as amended, and shall include, but is not limited to, those circumstances in which the director has found that probable cause does or does not exist or where the director and/or commission has

dismissed a charge pursuant to § 24-34-306(2)(b), C.R.S. (1988), as amended.

(3) General:

(a) Issuance of a notice of right to sue at any time shall cause jurisdiction of the commission to cease and shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to Part 3 of Article 34 of Title 24, C.R.S. (1988), as amended.

(b) The other provisions of this Rule 10.5(H) notwithstanding, the filing of a charge and/or issuance of a notice of right to sue is not a prerequisite to the bringing of a civil action is housing cases pursuant to § 24-34-505.6, C.R.S. (1988), as amended.

(c) Issuance of a notice of right to sue at any time shall terminate further processing of any charge by the division.

(4) Contents of notice of right to sue:

(a) All requests for issuance of a notice of a right to sue shall be in writing and signed by the charging party/complainant.

(b) The notice of right to sue shall contain:

1) authorization to the charging party/complainant to bring a civil action in district court;

2) the division director's and/or the commission's determination, decision or dismissal, as appropriate.

* * * *

Rule 10.8 - General Rules Governing Hearing Procedures.

(A) Basis and Purpose of the Rules. § § 24-4-103(4), 24-34-305(1)(a), C.R.S. (1988), as Amended

These procedures are adopted for the orderly transaction of business and are intended to set forth procedures to assist gathering information for the consideration of the ultimate decision-maker. Unless otherwise specified by law, these procedural rules are not intended to be jurisdictional. These

procedural rules are intended to facilitate the preparation of a case so that the hearing may be conducted within the speedy hearing provisions of § 24-34-306(11), C.R.S. (1988), as amended.

(B) Issuance of Complaint and Notice of Hearing.

(1) Notice of hearing and complaint:

After the director reports to the commission that efforts to conciliate a charge have failed, the commission, if it so determines, shall issue and mail a written notice and complaint requiring the respondent to answer the charges at a formal hearing before an administrative law judge. Such hearing shall be commenced within 120 days after the service of the written notice and complaint, unless an extension of time is granted in accordance with § 24-34-306(11), C.R.S. (1988), as amended, and Rule 10.8(B)(2) of these rules. Such notice and complaint, which also shall be mailed to the complainant, shall state the time, place and nature of the hearing. The date for commencement of the hearing set forth in the notice and complaint shall be the Monday prior to the end of the 120-day time period, except in housing cases wherein injunctive relief is sought pursuant

to § 24-34-507, C.R.S. (1988), as amended, the date of commencement of the hearing may be adjusted to any time within the 120-day period. In all cases, if the Monday is a legal State holiday, then the date for commencement of the hearing shall be the Tuesday prior to the end of the 120-day time period.

The notice shall state the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Such notice shall advise the respondent of the right to appear at the hearing, either in person or by counsel, as defined in Rule 10.8 to answer the complaint and to submit testimony. Such notice also shall inform the respondent that a written, verified answer to the complaint may be filed at the Civil Rights Division office, with a copy to the administrative law judge at the division of administrative hearings in Denver, prior to the hearing date. All notices shall advise the respondent that failure to answer a complaint at a hearing may result in the entry of default.

(2) Extension of time:

The administrative law judge may grant an extension of any time period

prescribed in § 24-34-306(11), C.R.S. (1988), as amended, to any party for good cause. The total period of extensions during the 270-day period (100-day period for housing cases with any extensions by the director) and 120-day period shall not exceed 90 days to all complainants and 90 days to all respondents. If the period allowed for extensions of time by § 24-34-306(11), C.R.S. (1988), as amended, has been granted to the complainant (charging party) and/or the respondent for a total of 180 days to all parties during the investigation period, then no further extensions of time may be granted.

(3) Contents of answers:

Answers shall contain the respondent's full legal name; form of doing business, *e.g.* , corporation or partnership; mailing address; and if represented by counsel, the full name and post office address of counsel; a general or specific denial of each allegation controverted by the respondent or a statement that the respondent is without knowledge or information sufficient to form a belief as to the truth of allegation, which statement shall be deemed a denial.

(4) Amendment:

The commission or the complainant shall have the power to reasonably and fairly amend any complaint. The respondent shall have the right to reasonably and fairly amend the answer.

(C) Motions and Affidavits Alleging Bias of the Commission, Commissioner, or the Division.

If a party moves to disqualify the commission on any basis specified in the State Administrative Procedure Act, the issues of the commission disqualification shall be held in abeyance until the case is before the commission for review. Any motion or affidavit directed at dismissal of the complaint or disqualification of the division or its staff due to bias is an improper motion which shall be denied. However, nothing in this rule is intended to preclude a challenge to the credibility of a witness due to bias.

(D) Filing and Service of Papers.

After the complaint is noticed for hearing, the original of all papers required to be served upon a party or person under Rule 10.3 and Rule 10.2(M) shall be filed with the commission through the division either before service or within a reasonable time thereafter. When the case has been assigned

to an administrative law judge, a duplicate shall be filed with the administrative law judge at the division of administrative hearings. Whenever service is required under these rules or otherwise a copy shall be served on the complainant whether or not such party has successfully intervened. Interrogatories, requests for documents, requests for admission, and answers and responses to these, shall not be filed unless on special order of the administrative law judge or unless they are needed for use in a motion hearing or hearing.

All pleadings filed after the commencement of a case shall bear the proper case number. The caption thereof shall properly show their nature and on whose behalf the pleading is filed.

No pleading or exhibit belonging in the files of the division shall be taken from the office or custody of the division except on order of the administrative law judge.

Unless otherwise ordered by the administrative law judge, depositions which have been filed with the division may be opened for examination by a party or counsel. Upon the conclusion of the examination, the depositions shall be resealed.

(E) Discovery, Informal Discovery Conference and Discovery Plans and Orders.

In order to facilitate the preparation for hearing with due regard to the time limitation under § 24-34-306(11), C.R.S. (1988), as amended, the administrative law judge shall establish a discovery cut off date not later than 40 days prior to the date set for hearing. The only exception to this discovery cut off date will be permitted under the procedures established under Rule 10.8(B) governing commencement of hearing. The following discovery procedures shall be followed:

(1) Informal discovery conference:

Subject to sanctions under Rule 37, C.R.C.P., all counsel and all parties shall schedule and attend an informal discovery conference among themselves. This conference shall be held no later than 30 days following the issuance of the notice of complaint at which time the following items shall be considered:

(a) The scope of discovery necessary in the case, including alternatives to formal discovery procedures.

(b) An expedited timetable for discovery by the parties with

due regard to the time limitation under § 24-34-306(11), C.R.S. (1988), as amended.

(c) Exchange of proposed witness and exhibit lists. Within 10 days following the informal discovery conference a joint or separate discovery plan shall be filed with the administrative law judge. (The parties shall state whether any continuance of the scheduled hearing date is anticipated at that time.)

(2) If a joint discovery plan is filed, the administrative law judge shall set a discovery cut off date not later than 40 days prior to the date set for hearing.

(3) If separate discovery plans are filed, the parties shall have five days from the date of filing of the separate discovery plan within which to object to the opposing party's discovery plan. Unless the objection sets forth the legal basis the objection shall be waived.

Within five days of receipt of an objection the opposing parties shall file their legal position against the

objection and the administrative law judge shall forthwith rule on the issue without hearing unless ordered by the administrative law judge. If a discovery hearing is conducted, the administrative law judge will take all action feasible to avoid any need for future motions to compel and requests for sanctions. The administrative law judge shall establish an expedited timetable for discovery by the parties with due regard to the time limitation under § 24-34-306(11), C.R.S. (1988), as amended, and shall set a discovery cut off date not later than 40 days prior to the date set for hearing.

(4) The discovery plan(s) or order will be the basis for the rulings on later motions concerning discovery.

(5) This discovery Rule 10.8(E) does not prevent informal modifications of the discovery plan(s) agreed upon by the parties.

(6) This discovery Rule 10.8(E) does not prevent discovery by the parties prior to the formulation of discovery plans nor entry of a discovery order.

(7) Extensions may only be granted for good cause, and in doing so the administrative law judge shall assess

a fair portion of any extension of time under § 24-34-306(11), C.R.S. (1988), as amended, in accordance with Rule 10.7(H) governing continuances and Rule 10.8(B)(2) governing extensions of time.

(8) Except for excusable neglect, upon failure of a party to timely comply with this discovery Rule 10.8(E), the administrative law judge shall impose sanctions under Rule 37. C.R.C.P., up to and including entry of default judgment.

(F) Determination of Motions.

(1) All motions involving contested issues of law shall be supported by a recitation of legal authority either incorporated into the motion or set forth in a separate memorandum brief. Except for motions made under Rule 12, C.R.C.P., if the moving party chooses to submit a brief rather than incorporating the recitation of legal authority into the motion, the brief shall be filed with the motion. The moving party under Rule 12, C.R.C.P., shall file such brief within 15 days of filing of the motion. Copies of the brief shall be served on all other parties. The responding party shall be allowed 15 days in which to file a responsive brief.

(2) If facts not appearing of record may be considered in disposition of the motion, a party may file affidavits with the motion in accordance with Rules 6(d) and 56, Colo. R. Civ. P. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

(3) If the moving party fails to incorporate legal authority into the motion and fails to file a separate brief with the motion, the administrative law judge may deem the motion abandoned and may enter an order denying the motion. Failure of a respondent party to file a memorandum brief shall not be considered a confession of the motion.

(4) If possible, motions shall be determined promptly upon the written motion and briefs submitted. However, the administrative law judge may order oral argument or an evidentiary hearing. If the request for oral argument or an evidentiary hearing is requested in a motion, memorandum brief or within 15 days of receipt of an opposing memorandum brief, oral argument may be allowed by the administrative law judge at his or her discretion. Any motion requiring immediate

disposition shall be called to the attention of a division clerk by the attorney filing such motion.

(5) Whenever the administrative law judge enters an order denying or granting a motion without a hearing, all parties shall be forthwith notified by the administrative law judge of such order. If the administrative law judge desires or authorizes oral argument or an evidentiary hearing, all parties shall be so notified by the administrative law judge. After notification, it shall be the responsibility of the moving party to have the motion set for oral argument or hearing. A notice to set oral argument or hearing shall be filed within 15 days of notification that oral argument or hearing is required or authorized.

(6) If any of the parties fails to appear at the oral argument or hearing, without prior showing of good cause for non-appearance, the administrative law judge may proceed to hear and rule on the motion.

(7) If a frivolous motion is filed or if frivolous opposition to a motion is interposed, the administrative law judge may assess reasonable attorney's fees against the party or

attorney filing such motion or interposing such opposition.

(8) Apportionment of extensions of time under § 24-34-306(11), C.R.S. (1988), as amended, shall be made in compliance with Rule 10.7(H) governing continuance.

(G) Setting Motions.

All hearings on motions shall be set by either the division of administrative hearings or the Colorado Civil Rights Division under the direction of a administrative law judge or commissioner as the case may be, upon notice. If a party desires to set a motion for hearing by telephone the notice shall so state. The original notice must be on file with the division before the date of setting, set forth in the notice. The party seeking the setting must then obtain the telephone setting from a division clerk, must confirm the date by telephone with all other parties and must file with the clerk and serve on all parties a notice of the date and time of setting.

(H) Continuance.

Continuances shall be granted only for good cause shown. No stipulation for continuance shall be effective until approved by the administrative law judge. Continuances may only be granted in accordance with any days left on extensions of time not previously granted to the parties pursuant to § 24-34-306(11), C.R.S. (1988), as amended. When a stipulated continuance requires an extension of time under § 24-34-306(11), C.R.S. (1988), as amended, the administrative law judge shall not grant the continuance unless the parties have also agreed to the apportionment of the extension of time between them. Counsel and parties should not assume that, because they are in agreement, the administrative law judge will grant a continuance. Continuances are to be discouraged.

Even though a party may not expressly request a continuance, under Rule 37, C.R.C.P., an administrative law judge shall assess a fair portion of any extension of time under § 24-34-306(11), C.R.S. (1988), as amended, to any party who, through motions or discovery procedures, causes a delay in the proceedings. An election to employ Rule 33(c), C.R.C.P., is an example where the administrative law judge must exercise discretion in assessing any continuances.

(I) Informal prehearing conference.

(1) Subject to sanctions under Rule 37, C.R.C.P., all counsel and all parties shall schedule and attend a prehearing conference among themselves. This conference shall be held no later than the 30 days prior to the date set for hearing, at which time the following items shall be considered:

(a) Preparation of a joint hearing data certificate in lieu of separate hearing data certificate.

(b) Cooperation with respect to the preparation of separate hearing data certificates.

(c) Matters which can be presented at hearing by stipulation or agreed statement.

(d) Final list of lay and expert witnesses reasonably expected to be called to testify at the hearing.

(e) Exchange or review of all exhibits to be offered at hearing and damages.

(f) Agreement as to the admissibility of exhibits.

(2) At this conference counsel shall undertake the following:

(a) A list of all exhibits to be introduced at hearing shall be exchanged. Each exhibit listed shall be marked or given a designation for identification. (Letters for complainant; numbers for respondent; names to be added if multiple complainants or respondents.) The authenticity and genuineness of each exhibit is admitted unless specifically objected to in writing 15 days prior to hearing.

(b) A copy of all bills, statements and written exhibits which do not exceed two pages in length shall be furnished to opposing counsel.

(c) All exhibits shall be made available for inspection.

(d) Counsel and parties shall supply opposing counsel and parties with a list of all items claimed as damages.

(e) All expert reports of any examining or treating expert who may be called to testify at

the hearing of the case shall be supplied opposing counsel by the party calling him or her as a witness. Any expert reports which reasonably could not have been obtained 30 days prior to hearing shall be handled by stipulation or order of the administrative law judge.

(3) A joint hearing data certificate shall set forth under the captions the matters on which the parties are agreed and those upon which there is a difference of position or contention. The certificate shall be filed no later than 20 days prior to hearing.

(4) If the parties are unable to agree upon a joint hearing data certificate they shall file separate certificates no later than 20 days prior to hearing.

(5) Each party shall be required to certify in the hearing data certificate that this rule has been complied with fully.

(J) Formal Prehearing Conference

If separate hearing data certificates are filed, the administrative law judge shall, no later than ten days prior to hearing, issue a prehearing order or may hold a prehearing conference pursuant to Rule 16, C.R.C.P.,

which shall be scheduled in accordance with Rule 10.8(G), governing setting motions. At the conclusion of the conference the administrative law judge shall issue a prehearing order no later than 10 days prior to the hearing.

Rule 10.9 - Hearing.

(A) Appearance

(1) The case in support of the complaint shall be presented at the hearing by the commission's counsel.

(2) At the discretion of the administrative law judge, complainant shall be permitted to intervene either in person or by counsel to present oral testimony or other evidence and to examine and cross-examine witnesses.

(3) Respondent may appear at hearings either in person or by counsel. If respondent is not in default, as defined in Rule 10.8(B), or by leave of the commission, he or she may present oral testimony and other evidence and examine and cross-examine witnesses.

(B) Commencement of Hearing

The hearing shall commence within 120 days of the notice and complaint or such later time as extended under § 24-34-306(11), C.R.S. (1988), as amended.

If the prehearing order or hearing data certificate indicates that discovery cannot in good faith be completed within the time period, the administrative law judge may commence the hearing to take available evidence and adjourn it to a later date after additional discovery can be completed.

If a party presents a motion for summary judgment the presentation of the motion with supporting evidence may constitute the commencement of the hearing.

(C) Conduct of Hearing

(1) To the extent not inconsistent with the law, the procedures set forth in the State Administrative Procedure Act shall apply to the conduct of the hearing.

(2) The hearing shall be conducted by one or more administrative law judges.

(3) Hearings shall be held at the place specified in the notice of hearing and due regard shall be exercised for the convenience of the parties and witnesses.

(4) The administrative law judge may continue hearings from day to day or adjourn them to a later date or to a different place either by announcement at hearings or by appropriate notice to all parties.

(5) Motions made during hearings and objections concerning the conduct of hearings, including objections to the introduction of evidence, shall be stated orally and shall be included in the record.

(6) The administrative law judge may exclude from the hearing room or from further participation in the proceedings any person who engages in improper conduct.

(7) Upon the motion of any party or upon the motion of the administrative law judge, all witnesses may be excluded from the hearing room, except for the parties themselves.

(8) All hearings shall be public.

(D) Evidence

(1) The commission shall not be bound by strict rules of evidence prevailing in courts. The right of cross examination shall be preserved, and such rules and requirements of proof

shall conform to the extent practical with those in civil non-jury cases in the district courts.

(2) The administrative law judge shall have full authority to control the proceedings, to admit or exclude testimony or other offers of evidence; and to rule upon all motions and objections and shall have all powers set forth in the State Administrative Procedure Act.

(3) All oral testimony shall be given under oath or affirmation and a record of the proceedings shall be made.

(4) The administrative law judge may permit the parties or their counsel to present oral arguments at the hearing and to file briefs within such time as the administrative law judge shall determine considering the convenience of the parties.

(E) Stipulations.

(1) Written stipulation of fact may be introduced into evidence if signed by the parties or by counsel. Oral stipulations may be made in the record of hearing.

(2) The commission expects the parties to stipulate evidence to the fullest extent possible.

(F) Determinations.

(1) If more than one administrative law judge is designated to hear the complaint, a presiding officer shall be elected by majority vote of the administrative law judges present, and such presiding officer shall have authority to decide on all rulings.

(2) All determinations at the hearing shall be by majority vote of the administrative law judges.

(G) Transcript.

(1) The administrative law judge shall cause the proceedings to be recorded by a reporter or by an electronic recording device. If an electronic recording device is used, all parties shall be notified and given the opportunity to provide a reporter at the hearing at their own expense.

(2) The transcript of the record of the proceedings shall consist of a complaint, as amended; notice of hearing; an answer to the complaint, as amended; transcript of testimony; exhibits, depositions, orders;

stipulations, pleadings; and such other documents as may properly become a part of the record.

* * * *

Rule 10.12 - Administrative Law Judge's Initial Decision.

The administrative law judge shall issue an initial decision within 30 days after the conclusion of the hearing, unless an application for extension of time is granted by the commission or a commissioner. Such initial decisions shall be rendered in accordance with § 24-4-105, C.R.S. (1988), as amended, except that the decision shall include a statement of the reasons why the findings of fact lead to the conclusions. In the absence of an appeal of the initial decision with 30 days of service, pursuant to Rule 10.13, the initial decision shall become the final order of the commission.

Rule 10.13 - Appeals of the Administrative Law Judge's Decision.

(A) Filing Exceptions.

Any party who seeks to appeal the initial decision of the hearing officer shall file exceptions with the commission at the division's Denver office within 30 days after service of the initial decision upon the parties, in accordance with § 24-4-105, C.R.S. (1988), as amended.

(B) Designation of Record.

Under § 24-4-105(15)(a), C.R.S. (1988), as amended, an appealing party is required to "file with the agency, within twenty days following such decision, a designation of the relevant parts of the record ... and of the parts of the transcript of the proceedings which shall be prepared, and advance the cost therefor. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party or the agency may also file a designation of additional parts of the transcript of the pro-ceedings which is to be included, and advance the cost therefor."

(C) All papers and documents of any kind which are directed to the commission on appeal shall be filed with an original and nine copies.

(D) The commission's final order shall be made a part of a certified transcript of the record of the proceedings, and the entire record shall be filed at the division's Denver office and shall be available for examination by the parties during regular business hours.

Rule 10.14 - Interpretation.

(A) Construction of rules. These rules shall be liberally construed to expedite the action of the commission and the division and to effectuate the purposes of the law.

(B) Application to the law. These rules are not intended to set forth a complete procedure, but rather to supplement and clarify the law. These rules are not designed to be jurisdictional and where not otherwise inconsistent with law, any of these rules may be modified in exceptional cases to meet emergencies or avoid substantial injustice or great hardship.

* * * *

GENERAL PROVISIONS

Rule 20.1

Every employer, employment agency, labor organization, and place of public accommodation, amusement and resort shall post and maintain at its establishment a notice furnished by the commission which contains the provisions of Parts 3 through 7 of Article 34 of Title 24, C.R.S. (1988), as amended. The commission will not charge for the notices.

(A) With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment, and at or near each location where employees' services are performed.

(B) With respect to labor organizations, such notices must be posted conspicuously in easily accessible and well-lighted places

customarily frequented by members and applicants for membership.

(C) With respect to places of public accommodation, amusement and resort, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by people seeking accommodation, amusement, recreation, or other services offered to the general public.

* * * *

Rule 20.4

No person shall post or permit to be posted in any place of public accommodation any sign which states or implies the following:

WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE.

* * * *

CREED AND RELIGIOUS DISCRIMINATION RULES (GUIDELINES)

Rule 50.1 - Definition.

Creed and religion are defined as a religious, moral or ethical belief which is sincerely held and includes all aspects of religious observance and practice.

Rule 50.2 - Statement of Purpose.

(A) The rules in this part have been adopted to contribute to the implementation of

nondiscriminatory personnel policies with respect to an employee's creed or religion, as required by Part 4 of Article 34 of Title 24, C.R.S.

(B) The rules in this part are designed to serve as a workable set of standards for employers, unions and employment agencies in determining whether their policies concerning an employee's creed or religion conform with the basic purposes of the elimination of discrimination in employment as defined by the law.

* * * *

SEXUAL ORIENTATION DISCRIMINATION RULES

Rule 81.1 - Statement of Purpose

The rules in this section have been adopted to contribute to the elimination of discrimination on the basis of sexual orientation, inclusive of transgender status, in employment, housing, public accommodations, and advertising, as required by Parts 3 to 7 of Article 34, Title 24, Colorado Revised Statutes, as amended, hereinafter referred to as the "Law." C.R.S. §24-34-305(1)(a), entitled "Powers and Duties of Commission," authorizes the Commission to "adopt, publish, amend and rescind" regulations consistent with and for the enforcement of the Law.

Rule 81.2 - Sexual Orientation Definitions

(A) The term "sexual orientation," as defined in the Law, means a person's orientation toward heterosexuality, homosexuality, bisexuality, transgender status or another person's perception thereof.

(B) The term "transgender" means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.

(C) The term "gender identity" means an innate sense of one's own gender.

(D) The term "gender expression" means external appearance, characteristics or behaviors typically associated with a specific gender.

(E) The term "covered entity" means any person, business, or institution required to comply with the antidiscrimination provisions of the Law.

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Editor's Notes

History

Rules 50.1; 50.2; 81.1; 81.2; 81.3; 81.5; 81.7; 81.10; 81.12, 85.0 eff. 10/30/2007.

Rule 81.1 emer. rule eff. 05/29/2008; expired 08/29/2008.

Rule 81 eff. 11/30/2009.

Code of Colorado Regulations
Secretary of State
State of Colorado

DEPARTMENT OF REGULATORY AGENCIES

Civil Rights Commission

STATE OF COLORADO CIVIL RIGHTS COMMISSION RULES AND REGULATIONS

3 CCR 708-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

INTRODUCTION

Rule 10.1 – Statement of Purpose.

The purpose of the Rules and Regulations of the Colorado Civil Rights Commission (hereinafter the "Rules") is to implement Parts 3 through 7 of Article 34 of Title 24, Colorado Revised Statutes (C.R.S.), as amended. These Rules are to serve as a set of standards, to provide guidance, and indicate factors which will be taken into consideration in determining whether or not there has been a violation of the Law. These Rules shall be liberally construed to prohibit discriminatory or unfair practices in employment, housing, places of public accommodation and advertising.

Rule 10.2 - Definitions.

(A) "Administrative Law Judge" (ALJ) means a hearing officer appointed by the Commission through the Office of Administrative Courts of the Department of Personnel and Administration or a hearing officer appointed by the Governor at the request of the Commission, for purposes of conducting an administrative hearing authorized by the Law.

(B) "Auxiliary Aids" means services or devices that enable persons with disabilities to have an equal opportunity to participate in, and enjoy the benefits of public accommodations, public entities, and other activities, programs, employment, housing, and services. Such services or devices may include, but are not limited to, the following: qualified readers, qualified interpreters, service animals, breathing equipment, wheelchairs, walkers, and orthopedic appliances.

(C) "Bona Fide Occupational Qualification" (BFOQ) means employment qualifications that employers are allowed to consider while making decisions about hiring and retention of employees. The qualification should relate to an essential job duty and is necessary for operation of the particular business.

(D) "Charging Party" or "Complainant" means a person alleging a discriminatory or unfair practice prohibited by the Law.

(E) "Commission" means the Colorado Civil Rights Commission created by § 24-34-303, C.R.S.

(F) "Commissioner" means a duly appointed member of the Commission.

(G) "Covered Entity" means any person, business, or institution required to comply with the anti-discrimination provisions of the Law.

(H) "Creed" means all aspects of religious beliefs, observances or practices, as well as sincerely-held moral and ethical beliefs as to what is right and wrong, and/or addresses ultimate ideas or questions regarding the meaning of existence, as well as the beliefs or teachings of a particular religion, church, denomination or sect. A creed does not include political beliefs, association with political beliefs or political interests, or membership in a political party.

(I) "Days" means calendar days.

(J) "Director" means the director of the Colorado Civil Rights Division, which office is created by §24-34-302, C.R.S.

(K) "Discriminatory or Unfair Practice" means one or more acts, practices, commissions or omissions prohibited by the Law.

(L) "Division" means the Colorado Civil Rights Division, created by § 24-34-302, C.R.S.

(M) "Domestic Service" means the performance of tasks such as housecleaning, cooking, childcare, gardening and personal services by an individual in a private household.

(N) "Employee," within the meaning of § 24-34-401(2), C.R.S., means any person who performs services for remuneration on behalf of an employer. An "employee" does not include the following:

(1) A person in the domestic service of any person;

(2) An independent contractor, as provided in Rule 75;

(3) A non-paid or uncompensated volunteer of a nonprofit organization or governmental agency;

(4) A partner, officer, member of a board of directors, or major shareholder, however if the individual is subject to the organization's direction and control and/or does not participate in managing the organization, then the individual shall be considered an employee;

(5) An elected governmental official or a person appointed to serve the remainder of a term of an elected governmental official; or

(6) A religious minister, whether lay or ordained, or other employee of a church or religious organization whose job duties are primarily of a ministerial, religious, spiritual or non-secular nature.

(O) "Employer" shall have the meaning set forth in § 24-34-401, C.R.S., and references in these rules to "employers" shall include employment agencies and labor organizations.

(P) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(Q) "Gender identity" means an innate sense of one's own gender.

(R) "Gender expression" means external appearance, characteristics or behaviors typically associated with a specific gender.

(S) "Investigation" means the systematic inquiry into the allegations of a charge by the Division and its Staff pursuant to its authority under 24-34-302 and 306.

(T) "Law" means Parts 3 through 7 of Article 34 of Title 24, of the Colorado Revised Statutes. Whenever these Rules refer to a provision of the Law or any other statutory or regulatory provision, the reference shall mean the current statutory or regulatory provision in effect, as hereinafter amended, revised, or re-codified.

(U) "Mail" means first class, postage pre-paid, United States mail, facsimile, or electronic mail.

(V) "Major life activities" means life functions, including, but not limited to, the following: caring for one's self, performing manual tasks, walking, standing, seeing, hearing, speaking, breathing, eating, sleeping, procreating, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions, including, but not limited to the following: functions of the immune system; cell growth; digestive, bladder and bowel functions; neurological and brain functions; respiratory and circulatory functions; endocrine functions; and reproductive functions.

(W) "Mental impairment" means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "mental impairment" includes, but is not limited to,

such diseases and conditions as the following: emotional illness, anxiety disorders, mood disorders, post-traumatic stress disorder, depression, schizophrenia, and bipolar disorder.

(X) "National origin" refers to the country where a person was born, or, more broadly, the country from which his or her ancestors came.

(Y) "Party" or "parties" means the Charging Party/Complainant and/or the Respondent.

(Z) "Petitioner" means a party who applies to the appropriate court for judicial review or enforcement of final agency action or a party seeking declaratory relief under these Rules.

(AA) "Physical impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems including, but not limited to, the following: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine. The term "physical impairment" also includes, but is not limited to, such diseases and conditions as the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, cancer, heart

disease, diabetes, and human immunodeficiency virus (HIV) infection.

(BB) "Religion" means all aspects of religious observance, belief and practice. A person does not have to be a member or follower of a particular organized religion, sect or faith tradition to have a religion.

(CC) "Respondent" means any person, agency, organization, or other entity against whom a charge is filed pursuant to any provisions of the Law.

(DD) "Sexual orientation," means a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or another person's perception thereof.

(EE) "Substantially limits" means the inability to perform a major life activity that most people in the general population can perform, or a significant restriction as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which most people in the general population can perform that same major life activity.

(FF) "Staff" means the Director and all persons employed to carry out the functions and duties of the Division pursuant to § 24-34-302, C.R.S.

(GG) "Transgender" means having a gender identity or gender expression that differs from societal expectations based on gender assigned at birth.

* * * *

Rule 10.4 - Charges.

(A) Who May File.

Any aggrieved person, directly or by an attorney, or the Commission, a Commissioner or the Attorney General may file a charge with the Division. Housing charges may be filed as designated above but may also be filed by an aggrieved person with the assistance of a non-attorney representative authorized by such aggrieved person or organization.

(B) Charge Intake Procedures.

A potential Charging Party or Complainant shall cooperate in submitting all information and forms required by the Division prior to the filing of a charge. Intake forms may include, but are not limited to, the following: intake questionnaires; statements or affidavits of discrimination; minimizing damages statements; and disability questionnaires (where applicable). The submission of an intake form does not constitute the filing of a charge of discrimination. As described further below in

this Rule, only a signed and verified charge in a form and content approved by the Division shall be accepted and filed as a charge of discrimination.

(C) Contents.

(1) Charges of Discrimination in Employment and Places of Public Accommodation.

(a) Charges alleging discrimination in employment and places of public accommodation, including charges alleging discriminatory advertising practices related to employment or places of public accommodation, shall contain the following information:

(b) The full name and mailing address of the Charging Party;

(c) The full name and mailing address of the Respondent;

(d) The basis of the alleged discrimination or unfair practice, identifying one or more protected classes and/or alleged retaliatory treatment;

(e) A statement of the jurisdictional authority for filing of the charge;

(f) A statement of personal harm that summarizes the discrete claim or claims of discriminatory treatment or unfair practices alleged against the Respondent;

(g) The Respondent's position, if known, with regard to the complaint;

(h) A statement of discrimination, consisting of a short and plain statement of the facts that give rise to the alleged discriminatory or unfair practice in employment, places of public accommodation, or advertising; and

(i) The most recent date the alleged discriminatory or unfair practice occurred.

(2) Charges of Discrimination in Housing.

Charges alleging discrimination in housing shall contain the following information:

(a) The full name and mailing address of the Charging Party/Complainant.

(b) The full name and mailing address of other persons

aggrieved by the discriminatory treatment or unfair housing practice.

(c) The full name and mailing address of the Respondent.

(d) A short summary of the discrete claim or claims of discriminatory treatment or unfair housing practices alleged against the Respondent.

(e) A statement of the jurisdictional authority for filing of the charge.

(f) The basis of the alleged discrimination or unfair housing practice, identifying one or more protected classes and/or alleged retaliatory treatment.

(g) The address and location of the property in question, or if no property is involved, the city and state where the alleged discrimination occurred.

(h) A brief and concise statement of the facts regarding the alleged violation(s).

(i) The most recent date on which the alleged discriminatory or unfair housing practice occurred.

(D) Time Limits on Filing.

(1) Charges shall be filed within the time limits specified by the Law. In computing any applicable time period, the date of the alleged discriminatory act shall not be counted. If the last date upon which a timely charge may be filed falls upon a Saturday, Sunday or State of Colorado legal holiday, the charge shall be deemed timely if filed with the Division on the next regular business day.

(2) Any untimely charge shall be barred and/or dismissed.

(3) A signed charge shall be deemed filed as of the date of receipt at an official office of the Division.

(4) For purposes of Part 4 of the Law, the date of the alleged discriminatory act is the date that the Charging Party first received notice of the adverse employment action at issue.

(E) Filing, Review and Notice.

(1) Charges shall be in writing and shall be signed and verified by the Charging Party or their attorney. Charges shall be filed with the Division at any of its official offices or at other offices designated by the Division to accept

written charges of discrimination. Charges shall be filed by either by personal delivery or mail.

(2) Staff shall be available at the Division's offices to assist in the drafting and filing of charges and to review and approve charges submitted for appropriate form and content prior to filing.

(3) Upon filing of the charge, the Division shall serve a copy of the charge and a notice by regular first class U.S. mail, postage pre-paid, to the last known address of the parties. The notice shall acknowledge the filing of the charge and advise the parties of the time limits applicable to charge processing and of the procedural rights and obligations of parties required by the Law and these Rules.

(F) Amendments.

(1) Subject to the approval of the Division, charges may be amended under certain circumstances. Amendments to the charge may include, but are not limited to: amendments to cure technical defects and errors or omissions, including failure to sign or verify a charge; to clarify or amplify the allegations therein; to join additional or substitute parties; or to allege

additional acts of unlawful, unfair or discriminatory practices arising from the subject matter of the original charge. Such amendments and amendments alleging additional acts which constitute unlawful, unfair, or discriminatory practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received.

(2) Amendments shall be filed in the same manner as provided by the Law and these Rules for the filing and serving of the original charge.

(G) Withdrawal.

The Director may allow withdrawal of a charge or its amendments prior to the time a complaint has been issued by the Commission. Thereafter, withdrawal of charges and of complaints may only be made with the approval of the Commission.

Rule 10.5 – Mediation, Investigation, Dismissal and Conciliation.

(A) Voluntary Mediation.

(1) The Division may invite the parties to meet in an attempt to mediate and informally resolve the charge at any stage of the administrative process prior to the issuance of a

determination of probable cause or no probable cause.

(2) Nothing said or done during endeavors at mediation shall be disclosed by any party or used as evidence in any subsequent proceeding, unless the parties agree otherwise.

(3) Upon request, the parties shall provide copies of settlement agreements entered into pursuant to mediation or private settlement negotiations to the Division, regardless of confidentiality provisions contained in such agreements. Settlement agreements received by the Division shall be treated as confidential pursuant to § 24-34-306(3), C.R.S.

(B) Requests for Information.

The Division may request production from the parties; any witnesses, statements, testimony, information, documents, evidence, or the inspection of places or things, reasonably calculated to lead to the discovery of evidence relevant to the allegations or circumstances of the charge.

(1) If a Charging Party fails or refuses to cooperate with a request for information, or otherwise unduly obstructs or delays the investigation, the Director may find that the charge

lacks probable cause and dismiss the same.

(2) Notwithstanding the Division's presumption that the conduct of any Respondent is fair and not discriminatory pursuant to § 24-34-305(3), C.R.S., if a Respondent fails or refuses to cooperate with a request for information, a rebuttable presumption may be created that the particular piece of information requested is harmful to the Respondent's position.

(C) Determinations of Probable Cause and Dismissal.

(1) No Probable Cause Determinations.

If it is determined, based upon the information gathered during the investigation, that probable cause for crediting the allegations of a charge does not exist, the Director shall dismiss the charge and notify the parties of such determination in writing by mail. The notice shall advise the Charging Party of the right to appeal the no probable cause determination to the Commission and that if the Charging Party wishes to file a suit in district court, such lawsuit must be filed within ninety (90) days of the date of mailing of the determination.

(2) Probable Cause Determinations.

If it is determined based upon the information gathered during the investigation that probable cause for crediting the allegations of a charge exists, the Director shall notify the parties of such determination in writing by mail and order the parties to attempt to resolve the charge through conciliation (compulsory mediation).

(3) No Probable Cause Dismissal for Other Reasons.

The Director may, without deciding on the merits of the alleged acts of discrimination, dismiss a charge for the following reasons: lack of jurisdiction; voluntary withdrawal of the charge; settlement of the charge; receipt of a request for issuance of a right to sue notice; referral of the charge to the Equal Employment Opportunity Commission (EEOC), U.S. Department of Housing and Urban Development (HUD), or the Colorado State Personnel Board; failure or refusal by the Charging Party/Complainant to cooperate in the investigation; inability of the Division to locate the Charging Party; and for any other reasonable grounds documented by the Division during the

investigation that, in the discretion of the Director, warrant administrative closure of the case.

(D) Conciliation.

(1) If the Director determines that probable cause exists, the Division shall attempt to eliminate or remedy the discriminatory practice through an agreement reached through compulsory mediation (conciliation).

(2) Conciliation entails the negotiation of a mutual agreement between the parties by a mediator, who may or may not be a staff member of the Division. The mediator shall contact the parties to initiate the conciliation.

(3) Types of relief sought in conciliation may include, but are not limited to, the following:

(a) Cease and Desist from a discriminatory practice;

(b) Back pay;

(c) Hiring of employee(s), with or without back pay;

(d) Reinstatement of employee(s), with or without back pay;

(e) Upgrading or promoting of employee(s), with or without back pay;

(f) Referring of applicants for employment by an employment agency;

(g) Restoring membership in a labor organization;

(h) Admission to or continued enrollment in an apprentice or training program;

(i) Admission to or continued enrollment in a vocational school;

(j) Public and private apologies;

(k) Posting of anti-discrimination notices;

(l) Remedial affirmative activities to overcome a discriminatory practice;

(m) Policy and procedure modifications;

(n) Education and training of Respondent management and staff;

(o) Reporting to and monitoring by the Division as to the manner of compliance;

(p) Housing-specific remedies provided Part 5, Title 24, Article 34, C.R.S.; and

(q) Public Accommodations-specific remedies provided in Parts 6 and 7, Title 24, Article 34, C.R.S.

(4) The assigned mediator shall determine when conciliation efforts are unsuccessful and a voluntary agreement is not likely to result. The Division may terminate its efforts to conciliate if the parties fail or refuse to make a good faith effort to resolve the dispute. The Division will inform the parties of the failure of conciliation in writing.

(5) If the Charging Party fails or refuses to accept conciliation terms that the Director believes are reasonable, the Director may nevertheless resolve the charge in the public interest by entering into a conciliation agreement with the Respondent and dismiss the charge. The Charging Party may appeal the Director's action to the Commission in the same manner as provided in these Rules for appeals of determinations of no probable cause. A

written notice of the conciliation agreement shall be mailed to all parties.

(6) The terms of any conciliation or settlement agreement, regardless of confidentiality provision, shall be made available to the Division by the parties.

(E) Disclosure.

Without the written consent of all the parties, the Commission and the Division shall not disclose the filing of a charge, the information gathered during the investigation, or the efforts to eliminate such discrimination or unfair practice by mediation or conciliation unless the disclosure is made in connection with the conduct of the investigation, the filing of a petition seeking injunctive relief or at a public hearing. In disclosing information gathered during the investigation to the parties, or for any other reason, the Division may exercise reasonable discretion to redact personally identifying information of individuals, proprietary information, or trade secrets otherwise protected by other provisions of state law.

(F) Evidence Examination.

Any of the parties or their counsel may examine any evidence contained in the investigative file of the charge, excluding

documents or information made confidential by law. Evidence does not include Commission or Division work product or documents protected by attorney-client privilege.

(G) Notice of Right to Sue.

(1) Request for Issuance after 180 days.

If the Charging Party makes a written request for issuance of a notice of right to sue after the expiration of 180 days following the filing of the charge, the request shall be granted provided that the Commission has been given the opportunity to determine if the charge shall be noticed for hearing, if a probable cause determination has been issued, and has not caused to be served a written Notice and Complaint pursuant to § 24-34-306(4), C.R.S.

(2) Effect of Issuance of a Right to Sue Notice.

Issuance of a notice of right to sue at any time shall cause jurisdiction of the Division and Commission to cease, shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to the Law and these Rules, and shall terminate further processing of the charge by the Division.

(3) Contents of Request.

All requests for issuance of a notice of a right to sue shall be in writing and signed by the Charging Party or their attorney.

(4) Contents of Notice.

The notice of right to sue shall authorize the Charging Party to bring a civil action in district court, advise as to the appropriate time period in which to sue as provided by the Law, and include the determination, decision, or dismissal, as appropriate.

* * * *

Rule 10.8 – General Rules Governing Hearing Procedures.

(A) When a case is set for formal hearing pursuant to § 24-34-306(4), C.R.S., the hearing procedures shall be governed by the Office of Administrative Courts Procedural Rules, 1 Code Colo. Reg. 104-1, as amended, relevant Office of Administrative Court Policies and subject to the following specific requirements:

(1) The hearing shall commence within one hundred and twenty (120) days of service of the notice of hearing and complaint, unless the Administrative Law Judge has granted an extension.

If the 120th day falls upon a Saturday, Sunday, or State of Colorado legal holiday, the hearing shall commence on the next regular business day.

(2) If any of the express provisions of the Rules of Procedure or Policies of the Office of Administrative Courts conflicts with the express provisions of the Law or these Rules, the Law or these Rules shall control and take precedence over the procedure or policy determined to be in conflict.

(3) The case in support of the complaint shall be presented at the hearing by the attorney general's office as counsel in support of the complaint, pursuant to § 24-34-306(8), C.R.S.

(4) Discovery procedure shall be those specified by the General Rules of Procedure of the Office of Administrative Courts of the Colorado Department of Personnel and Administration.

(5) At the discretion of the administrative law judge, the complainant shall be permitted to intervene through counsel to present oral testimony or other evidence and to examine and cross examine witnesses.

(6) If a party presents a motion for summary judgment, the presentation of the motion with supporting evidence may constitute the commencement of the hearing.

(B) The case in support of the complaint shall be presented at the hearing by the attorney general's office as counsel in support of the complaint. At the discretion of the ALJ, the complainant shall be permitted to intervene through counsel to present oral testimony or other evidence and to examine and cross examine witnesses.

Rule 10.9 – Declaratory Orders.

(A) These rules are adopted pursuant to § 24-4-105(11), C.R.S., in order to provide for a procedure for entertaining requests for declaratory orders to terminate controversies or to remove uncertainties with regard to the applicability of statutory provisions or rules or orders of the Commission to persons defined in the rules.

(B) Any person may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the commission.

(C) The Commission will determine, in its discretion and without notice to petitioner,

whether to rule upon any such petition. If the Commission determines that it will not rule upon such a petition, the Commission shall promptly notify the petitioner of its action and state the reasons for such action.

(D) In determining whether to rule upon a petition filed pursuant to this rule, the Commission will consider the following matters, among others:

(1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission.

(2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the petitioners.

(3) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court but not involving any petitioner.

(4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

(5) Whether the petitioner has some other adequate legal remedy which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

(E) Any petition filed pursuant to this rule shall set forth the following:

(1) The name and address of the petitioner.

(2) The statute, rule or order to which the petition relates.

(3) A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.

(F) If the Commission determines that it will rule on the petition, the following procedures shall apply:

(1) The Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:

(a) Any ruling of the Commission will apply only to the extent of the facts presented in the

petition and any amendment to the petition.

(b) The Commission may order the petitioner to file a written brief, memorandum or statement of position.

(c) The Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.

(d) The Commission may dispose of the petition on the sole basis of the matters set forth in the petition.

(e) The Commission may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.

(f) The Commission may take administrative notice of facts pursuant to the State Administrative Procedure Act [§ 24-4-105(8), C.R.S.], and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.

(g) If the Commission rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.

(2) The Commission may, in its discretion, set the petition for hearing under § 24-4-105, C.R.S., upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Commission to consider.

(G) The parties to any proceeding pursuant to this rule shall be the Commission and the petitioner. Any other person may seek leave of the commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the

Commission. A petition to intervene shall set forth the same matters as required by Rule 10.9(E) of this rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.

(H) Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute final agency action subject to judicial review pursuant to § 24-4-106, C.R.S.

* * * *

10.12 – Charges Initiated by the Commission, a Commissioner, or the Attorney General.

(A) General.

The procedures set forth in this Rule govern the practice and procedure for charges initiated by the Commission, a Commissioner or the Attorney General pursuant to § 24-34-306(1) (b), C.R.S. All procedures not specified in this Rule shall be governed by the general rules of practice and procedure provided by Rules 10.3 through 10.8 and rules 10.10 through 10.12. The Commission, Commissioner, or Attorney General is subject to a duty to follow all applicable administrative rules.

(B) Who May File.

The Commission, a Commissioner, or the Attorney General may make, sign, and file a

charge alleging a discriminatory or unfair practice in cases where the Commission, a Commissioner, or the Attorney General determines that the alleged discriminatory or unfair practice imposes a significant societal or community impact.

(C) Charges.

(1) Basis for Charge.

A charge may be initiated when the Commission, Commissioner, or Attorney General has cause to believe that any person or entity has been engaged in a discriminatory or an unfair practice that imposes a significant societal or community impact as described under Parts 4 through 7 of the Law. The basis of belief for initiating a charge is information from any source sufficient to suggest that a discriminatory or unfair practice has been or is being committed.

(2) Initiating a Charge.

(a) Commission-Initiated Charges.

Initiation of a charge alleging a discriminatory or unfair practice by the Commission shall be by motion at a Commission meeting. The

Commission Chair shall then file the charge on behalf of the Commission with the Division.

(b) Commissioner-Initiated Charges.

A Commissioner initiating a charge, as an individual, shall file a charge directly with the Division.

(c) Attorney General-Initiated Charges.

The Attorney General, through its representative, shall file a charge directly with the Division.

(3) Filing a Charge.

A charge filed by the Commission, a Commissioner, or the Attorney General shall be filed with the Division in the same manner and shall contain the same information as required for a charge filed by an individual pursuant to the provisions of Rule 10.4.

(4) Withdrawal of a Charge.

The Commission may submit a request to the Division for withdrawal of any charge or part thereof at any time prior to filing a civil action. The withdrawal

must be in writing and state the reasons for the withdrawal request. A Commissioner and Attorney General may submit a request to the Division for withdrawal of any charge or part thereof at any time prior to filing a civil action, without prior approval from the Commission. Upon approval of withdrawal of the charge by the Director, the investigation shall cease.

(5) New Charges.

The Commission, a Commissioner, or the Attorney General may file new charges alleging discriminatory or unfair practices that have occurred since the date of the original charges, consistent with the procedures set forth in this Rule. Nothing herein shall preclude the Commission from filing a new charge against the original Respondent or a new Respondent, whenever new facts deem it in the public interest, provided that all time limits and other jurisdictional requirements are met.

(D) No Probable Cause Determinations.

(1) If the Commission, a Commissioner, or the Attorney General disagrees with the Director's Determination of No Probable Cause and dismissal of the charge, the Commission,

Commissioner, or the Attorney General shall proceed to district court to file a civil action pursuant to § 24-34-306(2)(b)(I)(B).

(2) Time Limits.

If the Commission, Commissioner, or Attorney General wishes to proceed to district court, the action must be filed within ninety (90) days after the date the notice of dismissal is mailed.

(E) Whenever a party to a charge initiated by the Commission, a Commissioner, or the Attorney General requests an extension of time to complete the investigative process pursuant to § 24-34-306(11), such request shall automatically be granted.

Rule 10.13 – Investigations of Discrimination Charges Referred by the Colorado State Personnel Board.

(A) General.

Whenever a certified state employee or an applicant for classified state employment files a consolidated appeal/dispute form alleging discriminatory employment practices with the Colorado State Personnel Board (hereinafter, the "Board"), the Board refers the employee or applicant to the Division for an investigation of the allegations of discrimination, unless the

employee or applicant waives the investigation by the Division, pursuant to C.R.S. §24-50-125.3. The procedures set forth in this Rule govern the practice and procedure for conducting such investigations.

(B) Time Limit for Filing Charges in Investigations Referred by the Board.

A Charging Party referred by the Board shall file a charge with the Division within the time limit specified by the Board. If the Charging Party fails to file a charge within said time limit, the Charging Party shall be deemed to have waived an investigation by the Division and the Division shall not conduct an investigation, unless the Charging Party shows good cause to the Board for failing to comply with the time limit.

(C) Advisory Opinion Only.

The Division shall conduct an investigation of allegations of discrimination referred by the Board within the time limits specified by the Law and these Rules. Upon conclusion of the investigation, the Director shall render an advisory opinion ("Letter of Opinion") to the parties and for information of the Board. The Division shall notify the parties that the Letter of Opinion is advisory only and that the final administrative disposition of the matter is within the discretion of the Board.

(D) Charge Limited to Allegations Contained in the Notice of Appeal.

The claims alleged in a charge of discrimination filed pursuant to an investigation referred to the Division by the Board shall be limited solely to those allegations of discriminatory employment practices contained in the consolidated appeal/dispute form filed with the Board. If the Board permits the Charging Party to consolidate multiple appeals alleging additional allegations of discriminatory or unfair practices, the Division shall permit the Charging Party to amend the charge accordingly.

(E) No Right to Sue Issuance.

Because the Division's processing of a charge referred by the Board does not exhaust administrative remedies, the Division may not grant a request for issuance of a right to sue notice to a Charging Party referred by the Board. At any time during the course of an investigation, however, the Charging Party may waive further investigation and request administrative closure by the Division, whereupon the Division shall return the matter to the Board for final disposition. Such request shall be in writing, signed by the Charging Party or the Charging Party's attorney.

(F) No Right of Appeal to the Commission.

A Charging Party referred by the Board for an investigation by the Division does not have a right of appeal to the Commission from a Letter of Opinion finding no probable cause. Upon issuance of the Letter of Opinion by the Director, the Division shall cease all processing of the charge and return a complete copy of the investigatory file and Letter of Opinion to the Board for final disposition.

Rule 10.14 – Interpretation.

(A) Construction of rules. These rules shall be liberally construed to expedite the action of the Commission and the Division and to effectuate the purposes of the Law.

(B) Application to the law. These rules are not intended to set forth a complete procedure, but rather to supplement and clarify the Law. These rules are not designed to be jurisdictional and where not otherwise inconsistent with law, any of these rules may be modified in exceptional cases to meet emergencies or avoid substantial injustice or great hardship.

(C) Whenever possible, the interpretation of the Law shall follow the interpretations and guidance established in State and Federal law, regulations, and guidelines; and such interpretations shall be given weight and

found to be persuasive in any administrative proceedings.

GENERAL PROVISIONS

Rule 20.1 – Anti-Discrimination Notices in Employment and Places of Public Accommodation.

Every employer, employment agency, labor organization, and place of public accommodation shall post and maintain at its establishment a notice that summarizes the discriminatory or unfair practices prohibited by the Law in employment and places of public accommodation. The Division shall make a notice available for printing on its website or provide a copy upon request.

(A) With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible and well-lit places customarily frequented by employees and applicants for employment, and at or near each location where services of employees are performed.

(B) With respect to labor organizations, such notices must be posted conspicuously in easily accessible and well-lit places customarily frequented by members and applicants for membership.

(C) With respect to places of public accommodation, such notices must be posted conspicuously in easily accessible and well-lit

places customarily frequented by people seeking services, purchases, facilities, privileges, advantages, or accommodations offered to the general public.

* * * *

Rule 20.4 – Discriminatory Signage in Places of Public Accommodation.

No person shall post or permit to be posted in any place of public accommodation any sign that states or implies the following:

"WE RESERVE THE RIGHT TO REFUSE SERVICE TO ANYONE."

Such signage implies that management may rely upon unlawful discriminatory factors in determining access to a place of public accommodation and thus is prohibited.

* * * *

CREED AND RELIGION

Rule 50.1 – Accommodation of Creed and Religious Practices.

(A) Duty to Accommodate.

It is unlawful for a covered entity to fail or refuse to reasonably accommodate the creed or religious practice of an individual, unless the requested accommodation would result in undue hardship. After an individual requests

an accommodation of a creed or religious practice, the covered entity has a duty to engage in a good-faith interactive dialogue to determine an appropriate accommodation.

(B) Undue Hardship.

A refusal to accommodate an individual's creed or religious practice is justified only when a covered entity can demonstrate that an undue hardship would result from each available alternative method of accommodation. A mere assumption that more people with the same creed or religious practices as the person being accommodated may also need accommodation is not evidence of undue hardship.

* * * *

SEXUAL ORIENTATION

Rule 81.1 – Separate Lines of Progression and Seniority Systems.

It is an unlawful employment practice to classify any job according to sexual orientation or to maintain separate lines of progression or separate seniority lists based on sexual orientation where this would adversely affect any person.

Rule 81.2 – Medical Leave.

If an employer grants leave or time off from work to employees for medical reasons, the employer shall treat requests for leave to address health care needs

related to an individual's sexual orientation in the same manner as requests for other medical conditions.

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Editor's Notes

History

Rules 50.1; 50.2; 81.1; 81.2; 81.3; 81.5; 81.7; 81.10; 81.12, 85.0 eff. 10/30/2007.

Rule 81.1 emer. rule eff. 05/29/2008; expired 08/29/2008.

Rule 81 eff. 11/30/2009.

Entire rule eff. 12/15/2014.